

Masail Al Qudoori *Made Easy*

*In Question
Answer Format*

COMPLETE

By:

MUHAMMED ĀSHIQ ILĀHĪ
AL-BARNĪ

Translation Edited By:

MUFTI AFZAL HOUSEN ELIAS
(May Allah Protect him)

ZAM ZAM PUBLISHERS

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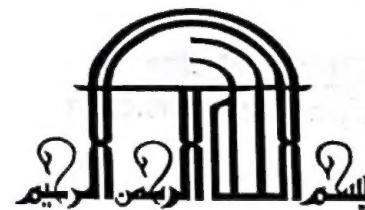
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Masail
Al Qudoori
Made Easy

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Introduction

An Introduction to the Science of Fiqh and the Author

There are a few factors that are necessary to know before studying any science. Amongst these are the definition of the science itself, the subject matter it discusses, the purpose of studying the science, an introduction to the founder of the science, the reason for its name, the importance of the science and an introduction to the author of the book to be studied.

The Literal Definition of Fiqh

The word Fiqh (فقه) has several literal meanings and it is according to these meanings that the definition of a Faqih (jurist) will vary. The following are some of the meanings:

1. 'To open' or 'to make clear'. The Faqih will therefore be someone who opens up and clarifies the injunctions of the Shari'ah.¹
2. 'To have knowledge of something'. In this case, it will refer specifically to the knowledge of the Shari'ah.²
3. 'To be dominant in knowledge'. This term is used when a person attains mastery in a science of knowledge and will therefore be regarded as a Faqih.

The Technical Definition of the Science of Fiqh

The most popular definition of Fiqh according to the Ulema of *Usoolul Fiqh* (the principles of Fiqh) is:

"Fiqh is the knowledge of such injunctions of the Shari'ah that are derived from its detailed sources."

The injunctions of the Shari'ah are of the following two types; the *Usool* (fundamental) type and the *Furoo* (derivative) type.

The *Usool* types of injunctions are those that concern beliefs, such as belief in Allaah, the Ambiyaa ﷺ, the divine scriptures, the Day of Qiyaamah, etc. Such injunctions are not discussed in Fiqh, but in a subject known as *Aqaa'id*. It is the second type of injunctions (the *Furoo*) that are discussed in Fiqh since these are the injunctions derived from the sources of the Shari'ah. Because the Ulema of the early days classified both types of injunctions as one, they have been quoted as defining Fiqh as a person's knowledge of what rights it owes and what rights are due to it. However, once the types of injunctions had been separated later on, the definition is now as stated earlier.

¹ *Al Faa'iq* by Zamakhshari.

² *Durrul Mukhtaar*.

According to the jurists, knowledge of the *Furoo* is regarded as the science of Fiqh. In the terminology of the Sufis, Fiqh refers to both the knowledge and practical implementation of these injunctions.

There are, however, some constraining factors to this technical definition, which need clarification, as follows:

Knowledge of injunctions: By stating that the science of Fiqh concerns the knowledge of injunctions, the definition excludes sciences dealing with objects and attributes. The term 'of the Shari'ah' excludes injunctions that are based on human logic, experience and other technical injunctions. The phrase 'derived from its detailed sources' excludes the knowledge of the Muqallid because his opinion will be governed by that of the Mujtahid, which requires a source.

The Subject Matter

The subject matter of any science is essentially that which is discussed in the field. For example, the subject matter discussed in medicine will be the human body and the subject matter discussed in grammar will be words and sentences. While medicine will then further discuss the health of the human body, grammar will discuss the formation of sentences and its various types and forms.

The subject matter discussed in the science of Fiqh is the actions that need to be carried out by a person who is sane and of age and the types of these actions in terms of them being Halaal, Haraam, permissible, impermissible, Fardh (obligatory), Sunnah, Waajib (compulsory), etc. As for the injunctions pertaining to insane people and children, these are discussed in Fiqh because they address the guardians of these people. In addition to this, the Ibaadah of children are discussed so that children may learn and prepare for the time when they come of age and need to carry out these injunctions.

The Purpose of Studying Fiqh

The purpose of studying Fiqh is to practise on the injunctions of the Shari'ah in order to achieve success in both worlds.

The Sources

Fiqh is derived from the following four sources:

1. The Qur'aan
2. The Sunnah of Rasulullaah ﷺ
3. Ijmaa
4. Qiyaas
5. The Qur'aan is that speech of Allaah that He had revealed to His final Nabi Hadhrat Muhammad ﷺ and has remained protected in its pristine purity since then and then forever until the Day of Qiyaamah through its unbroken chain of transmission.

2. The Sunnah of Rasulullaah ﷺ refers to the words and actions of Rasulullaah ﷺ as well as the actions of others that he had sanctioned.
3. Ijmaa refers to the consensus of the Ummah, regardless of whether it was the consensus of the Sahabah رضی اللہ عنہم or the Fuqahaa and Ulema after them. This is a dependable source because Rasulullaah ﷺ explicitly stated that the Ummah shall never be unanimous about anything that is wrong. Therefore, anything that has been practised continuously by the Ummah throughout the generations will be classified as Ijmaa. For example, if someone instructs a tailor to sew him a set of clothing and does not specify a time frame for the work, the transaction would be valid because this is the manner in which such transactions have always been carried out. This is despite the fact that it would appear that such transactions should not be valid since it falls under the category of a *Salam* transaction.
4. Qiyaas refers to such analytical deduction that is derived from the Qur'aan, the Sunnah and from Ijmaa.

The Status of Fiqh

The virtues of studying Fiqh are numerous. In fact, Allaah has mentioned in the Qur'aan that the person endowed with "*hikmah*" has truly been endowed with tremendous good. The scholars of Tafseer have stated that this *hikmah* refers to the knowledge of Fiqh. It is for this reason that it is commonly stated that the best of knowledge is that of Fiqh because it is a means to acquiring many other forms of knowledge.

Rasulullaah ﷺ said, "When Allaah intends that good reaches a person, he endows him with Fiqh (understanding) in Deen."³

Rasulullaah ﷺ also said, "A single Faqih is harder for Shaytaan than a thousand worshippers."⁴ This is because the Faqih benefits many other people through his teachings and a worshipper benefits only himself.

The book *Multaqat* and other books quote Imaam Muhammad رحمہ اللہ as saying that rather than other forms of knowledge, it is of utmost importance to master Fiqh because it is through this science that matters of Halaal and Haraam and so many others are learnt. A poet says:

*"If scholars are to boast about their knowledge
Then it is the knowledge of Fiqh that takes the honours
How many perfumes are there with fragrant smells, but none like musk*

³ Bukhaari and Muslim.

⁴ Tirmidhi, from Hadhrat Abdullaah bin Abbaas رضی اللہ عنہ.

And how many birds are there that can fly, but none like the falcon"
The great Faqih Imaam Muhammad bin Hasan Shaybaani رحمہ اللہ was once told:

*"Acquire the knowledge of Fiqh because it is the best of guides
Guiding you towards good, Taqwa and the best of ways
Acquire more and more of Fiqh every day
And then swim in the oceans of virtue
This is because a single pious Faqih
Is harder for Shaytaan than a thousand worshippers"*

The following couplets have been attributed to Hadhrat Ali رضی اللہ عنہ:

*"The value of every person is gauged by that which they master
The ignorant ones will, however, always be enemies to the men of knowledge
Prosper in acquiring knowledge and never remain ignorant
Because while all people are dead, it is the men of knowledge who remain alive"*

A Brief History of the Science of Fiqh

Allaah has sent mankind to this world to live their lives according to His commands so that they may please Him and eventually earn entry into Jannah. But what are these commands? It is to convey these to the people that Allaah had sent the Ambiyaa رضی اللہ عنہم to the world. The last of them was our Rasulullaah ﷺ, after whom there shall be no other new Nabi ﷺ.

Every aspect of the life of Rasulullaah ﷺ was a comprehensive code that demonstrated beliefs, Ibaadah, character, etiquette, social interaction and so many other facets of a person's life.

When Rasulullaah ﷺ left this world, the Khulafaa Raashideen, who were taught by Rasulullaah ﷺ himself, established the Deen, enforced the code of the Shari'ah and propagated this throughout the world. As time progressed, new challenges faced the people and their solutions appeared to be absent in the Qur'aan and the Ahadeeth. The need therefore arose for such questions to be answered using the mechanisms of the Qur'aan and the Ahadeeth. It became the task of the Mujtahideen to apply the principles of the Shari'ah derived from the Qur'aan and Ahadeeth to these offshoot questions and arrive at conclusions. Questions that had not been directly answered in the Qur'aan and Ahadeeth were therefore solved using principles from the Qur'aan, the Sunnah, Ijmaa and Qiyaas.

Amongst the many Mujtahideen who were famed during their times was Imaam Abu Haneefah رحمہ اللہ, Imaam Maalik رحمہ اللہ, Hadhrat Sufyaan Thowri رحمہ اللہ, Hadhrat Ibn Abi Layla رحمہ اللہ, Hadhrat Muhammad رحمہ اللہ bin Abdur Rahman رحمہ اللہ, Hadhrat Abdur

Rahmaan Awzaa'ee رَحْمَانُ أَوْزَاعِي, Imaam Shaafi'ee شَافِعِي, Imaam Ahmad bin Hanbal أَحْمَدُ بْنُ حَنْبَلٍ and Hadhrat Dawood bin Ali Isfahaani دَاوُدُ بْنُ عَلِيٍّ إِسْفَهَانِي. However, the four who were most widely accepted by all were the following:

1. Imaam Abu Haneefah أَبُو حَنِيفَةَ – born in the year 80 A.H. in Iraq, passed away in the year 150 A.H.
2. Imaam Maalik مَالِكُ – born in the year 93 A.H. in Madinah, passed away in the year 179 A.H.
3. Imaam Shaafi'ee شَافِعِي – born in the year 150 A.H. in Ghazza in Palestine, passed away in the year 204 A.H.
4. Imaam Ahmad أَحْمَدُ – born in the year 184 A.H. in Iraq, passed away in the year 241 A.H.

It is through the sincerity of these great men that the majority of the Ummah relied on them and followed their Madh'hab. It seems appropriate now to shed a little light on their lives.

A Brief Biography of Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ (born 80 A.H., passed away 150 A.H.)

His name was Nu'maan bin Thaabit bin Zuti bin Mah Kufi, but was famously known as Abu Haneefah. Although Islaamic knowledge developed together with the Deen itself and the knowledge of Aqaa'id, Tafseer, Hadith and Fiqh were established, nothing was codified and classified in a formal manner during the time of Rasulullaah ﷺ and the Khulafaa Raashideen. In fact, the science of Fiqh did not have any status at the time during the first Islaamic century and therefore cannot be attributed to any individual. However, as the second Islaamic century progressed and people started to codify and formalise the various Islaamic sciences, these individuals were famed for having being the founders of these faculties of knowledge and the first to codify them. It is for this reason that Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ is regarded as the founder of the Hanafi Madh'hab.

Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ was born in Kufa in the year 80 A.H. Together with studying Ahadeeth, he also acquired proficiency in other sciences. He says, "I focussed on every field of knowledge and studied them all." When his teacher Hadhrat Hammaad رَحْمَتُ اللَّهِ عَلَيْهِ passed away in the year 120 A.H. Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ took his place and started to lecture and issue Fataawaa. People started to flock to him for learning from far and wide.

Because the science of Fiqh had not been formalised at the time, there were no principle in place nor any definitions or terminologies. The city of Kufa was an important city because it was home to some 1500 Sahabah رَضِيَ اللَّهُ عَنْهُمْ, with 24 veterans of the Battle of Badr amongst them. Hadhrat Umar رَضِيَ اللَّهُ عَنْهُ had appointed Hadhrat Abdullaah bin

Mas'ood مَسْعُودٌ as the chief teacher of the city and it was the same city that became the capital city of the Islaamic Empire during the Khilaafah of Hadhrat Ali رَضِيَ اللَّهُ عَنْهُ. Because it was the meeting place of the Arab and non-Arab regions, many new questions needed to be researched there.

In brief, it may be stated that when Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ had started to codify the science of Fiqh, many such questions arose concerning which no authentic Ahadeeth could be sourced, nor any statements of the Sahabah رَضِيَ اللَّهُ عَنْهُمْ. It was therefore necessary to use Qiyaas. Although Qiyaas had always been employed, there had never been principles set for it, which he introduced. It was for this reason that he is historically known as *Imaam Ahlur Rai* (the Imaam of the people who exercise their opinions). This was especially unique because other Muhadditheen never exercised Qiyaas in Ahadeeth

As a Taabi'ee

It has been reported that Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ had met the Sahabi Hadhrat Anas رَضِيَ اللَّهُ عَنْهُ and had heard him narrate the Hadith, "Seeking knowledge is compulsory for every Muslim." For this reason, he is regarded as a Taabi'ee, an honour that distinguishes him from the other three Imaams of Fiqh.

Trade and Generosity

Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ was a silk merchant and continued to engage in trade even while he was studying. However, he later freed himself completely to attend to his lectures and issuing Fataawaa. He eventually became an Imaam in his field and became known as one of the most intelligent people of all time. He was exceptionally proficient in extracting laws from the sources of the Shari'ah, he was eloquent in speech and his voice commanded great respect from others. He was well dressed and known for his good looks. At the same time, his Taqwa was of a very high calibre and he was very abstinent. He was also very generous and it was his habit to accumulate the year's profits from the trade he conducted between Kufa and Baghdad. At the end of the year he then spent the money on fulfilling the needs of his students as well as Muhadditheen and other pious scholars. Whatever was left from this was then redistributed amongst them. He would then tell them, "Use the money for your needs and praise only Allaah for it because I have not spent on you from my wealth but from what Allaah has given me out of His grace and generosity."

When his child Hammaad learnt Surah Faatiha as a child, Imaam Abu Haneefah رَحْمَتُ اللَّهِ عَلَيْهِ gave his teacher 500 Dirhams as a gift. This was a time when it cost one Dirham to buy a sheep. When the teacher felt

that the gift was too big for teaching a child only Surah Faatiha, Imaam Abu Haneefah رحمته الله said to him, "Never think that what you have taught my child is insignificant. Because of the honour of the Qur'aan, I would have given you even more if I had the means."

Hadhrat Mis'ar bin Kudaam رحمته الله said, "The person who makes Imaam Abu Haneefah رحمته الله his Imaam and guide to Allaah should not fear because this act is one of great caution."

Hadhrat Imaam Abu Yusuf رحمته الله said, "I have never known anyone who could better explain the Ahadeeth than Imaam Abu Haneefah رحمته الله."

Imaam Shaafi'ee رحمته الله said, "All people depend upon Imaam Abu Haneefah رحمته الله when it comes to the knowledge of Fiqh." He also said, "Anyone wishing to attain proficiency in the knowledge of Fiqh must not leave Imaam Abu Haneefah رحمته الله and his students because the meanings and intent (of Ahadeeth) was easy for them to grasp."

Hadhrat Ahmad bin Surayj رحمته الله said that he heard Imaam Shaafi'ee رحمته الله say, "I once asked Imaam Maalik رحمته الله whether he met and spoke to Imaam Abu Haneefah رحمته الله. His reply was, 'Yes. I have met that man who, if he wills, can prove that a stone pillar is made of gold.'"

Imaam Abu Haneefah رحمته الله passed away in Baghdad in the year 150 A.H.

A Brief Biography of Imaam Maalik رحمته الله (born 93 A.H., passed away 179 A.H.)

His name was Maalik bin Anas bin Abu Aamir Asbahl and he was regarded as the most proficient in both the fields of Fiqh and Ahadeeth. He was born during the reign of Waleed bin Abdul Malik in the year 93 A.H. and passed away during the reign of Haaroon Ar Rasheed in the year 179 A.H. in Madinah Munawwarah. He lived all his life in Madinah and never moved anywhere else. Like Imaam Abu Haneefah رحمته الله, he lived during the reins of both the Umayyad and Abbaasi dynasties, but saw more of the Abbaasi rule. During the times of both Imaams, the Muslim Empire stretched from the Atlantic Ocean in the west to China in the east and even the heart of Europe with the conquest of Spain.

Imaam Maalik رحمته الله studied from the Ulema of Madinah and was a student of Hadhrat Abdur Rahman bin Hurmuz رحمته الله for a long time. He also studied under the freed slave of Hadhrat Abdullaah bin Umar رحمته الله Hadhrat Sall رحمته الله as well as Hadhrat Ibn Shihaab Zuhri رحمته الله. He acquired his knowledge of Fiqh from Hadhrat Rabee'ah bin Abdur Rahman, also known as Rabee'ah Ar Rai. The

famous book that Imaam Maalik رحمته الله wrote is known as the Mu'atta and holds an esteemed position in both the fields of Fiqh and Ahadeeth.

Imaam Shaafi'ee رحمته الله said, "Imaam Maalik رحمته الله is my teacher from whom I have acquired my knowledge. He is my proof before Allaah and has been my greatest benefactor. Whenever the names of Ulema are mentioned, his name occupies the exalted position of a lofty star."

A Brief Biography of Imaam Shaafi'ee رحمته الله (born 150 A.H., passed away 204 A.H.)

His name was Muhammad bin Idrees bin Abbaas bin Uthmaan bin Shaafi and he belonged to the Banu Hashim clan of the Quraysh. His lineage leads to the lineage of Rasulullaah ﷺ and joins up at Abd Manaaf. He was born in the Ghazza region of Palestine in the year 150 A.H., which happened to be the year during which Imaam Abu Haneefah رحمته الله passed away.

His father passed away in Ghazza when he was only two years of age, after which he returned to his ancestral home of Makkah with his mother. He therefore grew up as an orphan. He memorised the Qur'aan at a young age and lived in the village of the Hudhayl tribe to master the Arabic language. He therefore became one of the most eloquent speakers of Arabic, had memorised the poetry of the Hudhayl and was so proficient in the language that the famous linguist Isma'ee said, "I learnt the poetry of the Hudhayl from a youngster of the Quraysh called Muhammad bin Idrees."

Imaam Shaafi'ee رحمته الله studied under the tutelage of the Mufti of Makkah Hadhrat Muslim bin Khlaald Zanjli رحمته الله, who later permitted Imaam Shaafi'ee رحمته الله to issue Fataawaa when he was only 15 years of age. He then moved to Madinah, where he studied Fiqh under Imaam Maalik رحمته الله and memorised the Mu'atta in just nine days. He also studied Ahadeeth under Hadhrat Sufyaan bin Uyaynah رحمته الله and Hadhrat Fudhal bin Ayaadh رحمته الله.

Imaam Shaafi'ee رحمته الله then travelled to Yemen and then later travelled to Baghdad, where he acquired the knowledge of the Fuqahaa of Iraq from Imaam Muhammad bin Shaybaani رحمته الله. There he also engaged in some academic debates with Imaam Muhaimmad رحمته الله, which was attended by the Khalifah Haaroon Ar Rasheed.

He met with Imaam Ahmad رحمته الله in the year 187 A.H. in Makkah, where he studied Fiqh and its principles as well as the science of the abrogated verses. He then left for Egypt in the year 200 A.H., where he laid the foundation of his Madh'hab. It was finally in Egypt that the

Imaam passed away in the year 204 A.H. and he was buried at a place called Firaqah.

A Brief Biography of Imaam Ahmad bin Hanbal رحمہ اللہ (born 164 A.H., passed away 241 A.H.)

His name was Ahmad bin Hanbal bin Hilaal bin Asad Duhali Shaybaani and was known as Abu Abdullaah. He was born in the year 164 A.H. in Baghdad, where he was brought up. In his quest for knowledge, he also travelled to other centres of learning such as Kufa, Basrah, Makkah, Madinah, Yemen, Shaam and Jazeerah.

Although he initially followed the teachings of Imaam Shaafi'ee رحمہ اللہ when in Baghdad, he later became a Mujtahid in his own right and laid the foundation of the Hanbali Madh'hab. He rendered great services to the science of Ahadeeth and was regarded as the Imaam of the Muhadditheen during his time. He therefore had the honour of being an Imaam of both Ahadeeth and Fiqh.

Hadhrat Ibraheem Harabi رحمہ اللہ says that it seems that the knowledge of all the earlier scholars as well as the knowledge of the latter day scholars had all been embodied in the person of Imaam Ahmad رحمہ اللہ. Imaam Shaafi'ee رحمہ اللہ said that when he had left Baghdad, there was no greater Faqih or anyone more pious than Imaam Ahmad رحمہ اللہ.

He exercised tremendous fortitude during the reigns of Ma'moon Rasheed, Mu'tasim and Waathiq when they imprisoned him and tortured him because he promoted the true belief that the Qur'aan is the speech and not the creation of Allaah.

Hadhrat Ibnul Madeeni رحمہ اللہ says that the two persons though whom Allaah had accorded great honour to Islaam were Hadhrat Abu Bakr رحمہ اللہ when he combated the renegades and Imaam Ahmad رحمہ اللہ when he combated those who believed that the Qur'aan was the creation of Allaah. He eventually passed away in Baghdad in the year 241 A.H.

These were the four Imaam whose Madhaa'hib have been most followed, codified and remain in existence until this day. May Allaah grant them the best of rewards.

Amongst these Imaams, it is Imaam Abu Haneefah رحمہ اللہ who leads the rest because he not only preceded them in time, but he also has the largest following. The majority of Muslims in India, Pakistan, Bangladesh and Afghanistan as well as people in other parts of the world adhere to his Madh'hab and they teach his Madh'hab in their Madrasahs.

Because the foundation of the Hanafi Madh'hab had been principally laid by Imaam Abu Haneefah رحمہ اللہ and his illustrious students

Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammad رحمہ اللہ, it is deemed appropriate to mention their biographies in brief here.

A Brief Biography of Imaam Abu Yusuf رحمہ اللہ (born 113 A.H., passed away 182 A.H.)

His name was Ya'qoob bin Ibraaheem bin Habeeb but he was known as Abu Yusuf. He was regarded as a Haafidh of Ahadeeth and a Muhaddith. He had a deep relationship with Imaam Abu Haneefah رحمہ اللہ and was an expert in Qiyaas. He was appointed the Chief Justice in Baghdad and retained the post until he passed away in the year 182 A.H. during the reign of Haaron Ar Rasheed.

He was the highest ranking of all the students of Imaam Abu Haneefah رحمہ اللہ and he was the very first to write books according to the Hanafi school of jurisprudence.

A Brief Biography of Imaam Muhammad bin Hasan Shaybaani رحمہ اللہ (born 132 A.H., passed away 189 A.H.)

His name was Muhammad bin Hasan bin Waaqid Shaybaani and he was also known as Abu Abdullaah. Although his father reigned from Shaam, he had moved to Iraq, where Imaam Muhammad رحمہ اللہ was born in the city of Waasit. He then grew up in Kufa, where together with studying at the feet of great Muhadditheen, he also mastered the sciences of Tafseer, Arabic and mathematics. He taught Imaam Shaafi'ee رحمہ اللہ, who said, "I have acquired a camel's load of knowledge from Imaam Muhammad رحمہ اللہ."

He was one of the greatest students of Imaam Abu Haneefah رحمہ اللہ and greatly contributed to the propagation of his teacher's teachings. It is in fact through his writings that the teachings of Imaam Abu Haneefah رحمہ اللہ have reached us.

It has been stated that he wrote 990 books. When Imaam Ahmad رحمہ اللہ was asked where he had learnt the intricate questions that he addressed, he replied that he had learnt it from the books of Imaam Muhammad رحمہ اللہ. Amongst his famous writings are *Mabsoot*, *Jaami-ul Kabeer*, *Jaami-us Sagheer*, *Siyarul Kabeer*, *Siyarus Sagheer*, *Ziyaadaat*, *Raqiyaat*, *Haarooniyaat*, *Kaysaaniyaat*, *Jurjaaniyaat*, *Kitaabul Aathaar* and *Mu'atta Imaam Muhammad*.

A Brief Biography of Imaam Zufar رحمہ اللہ (born 110 A.H., passed away 158 A.H.)

His name was Zufar bin Hudhayl bin Qais Basri. His father hailed from Isfahaan. Although he was a student of Imaam Abu Haneefah رحمہ اللہ, the Imaam respected him greatly and lauded him as being the one most proficient in Qiyaas. Together with being a great scholar, he was also extremely pious and abstinent.

Some Definitions Unique to the Fuqahaa of the Ahnaaf

The Laws of the Shari'ah are Divided into Five Categories:

(1) Fardh

These are commands that are proven from sources that cannot be doubted. Examples of Fardh (obligatory) commands are the five daily salaahs, zakaah, fasting in Ramadhaan and the Hajj, all of which are proven from the Qur'aan and the Ahadeeth.

The Status of Fardh

It is obligatory for every person bound by the Shari'ah (*Mukallaf*) to believe that a Fardh act is indeed obligatory and for him to then carry it out. Anyone who rejects the obligatory nature of the duty will be a Kaafir whereas the person who accepts the obligation but fails in practically carrying out the action will be called a *Faasiq* (open sinner) and will be liable for punishment.

The Difference between a Shart (precondition) and a Rukn (fundamental)

A Fardh act is sometimes called a *Shart* (a precondition) and a sometimes also called a *Rukn* (fundamental). The difference is that when the Fardh is not part of the actual act, it will be called a *Shart* (precondition) and when it is part of the act itself, it will be called a *Rukn* (fundamental). For example, purity is Fardh for salaah, but because it does not form part of the salaah and is acquired outside salaah, it will be called a *Shart*. On the other hand, acts like Ruku and Sajdah are also Fardh in salaah, but form part of the salaah itself. Each one of them will therefore be called a *Rukn* of salaah.

In Terms of the Deed, Fardh Actions are divided into two Categories; Fardh Ayn and Fardh Kifaayah

FARDH AYN: This is that command that is obligatory for each and every *Mukallaf* to carry out and which people will not be absolved of doing if a few people carry it out. Examples of this are the Fardh salaahs, fasts of Ramadhaan, zakaah, etc.

FARDH KIFAAYAH: This is that command that is obligatory for all people collectively to carry out but if some of them do carry it out, the rest will be absolved of the obligation. However, if no one carries it out, they will all be sinful. These are of several types:

1. Purely Deeni commands: such as bathing the deceased, performing the Janaazah salaah, burying the dead, memorising the Qur'aan

2. Purely worldly: such as engaging in forms of trade by which the necessities of people are met, such as farming, medical treatment, etc.
3. Part Deeni and part worldly: such as enjoining good and forbidding evil and Jihaad in the path of Allaah when it is not explicitly commanded by the Ameer, extinguishing fires, etc.

(2) Waajib (compulsory)

These are commands that are proven from sources that Dhanni (not completely beyond question). Such sources may either be doubtful in themselves or the compulsion that it instructs is not explicit. An example is the Witr salaah, which is proven from a narration that is an isolated narration and not a Mutawaatir narration. Because such a proof is not as explicit as the proof that substantiates a Fardh (obligatory) act (called a *Qat'ee* proof), this act will be termed Waajib (compulsory) and not Fardh (obligatory).

The Status of a Waajib Act

While it is necessary for every *Mukallaf* to carry out a Waajib act, it is not necessary for them to believe that it is indeed compulsory because the proof is not explicit enough. Therefore, the person who refuses to believe that a Waajib act is indeed compulsory will not be regarded as a Kaafir.

In Terms of the Deed, Waajib Actions are divided into two Categories; Waajib Ayn and Waajib Kifaayah

WAAJIB AYN: This is that command that is obligatory for each and every *Mukallaf* to carry out and which people will not be absolved of doing if a few people carry it out. Examples of this are the Witr salaah, Sadaqatul Fitr, the Eid salaah, slaughtering an animal on the occasion of Eid, etc.

WAAJIB KIFAAYAH: This is that command that is compulsory for all people collectively to carry out but if some of them do carry it out, the rest will be absolved of the compulsion. However, only those carrying out the act will be rewarded. If no one carries it out, they will all be sinful. An example is if an individual greets a group of people with Salaam, it will suffice if only one of them reply to the Salaam. However, only this one respondent will be rewarded.

(3) Sunnah

The word Sunnah literally means a way or a habit. Technically, it refers to any act that is proven from Rasoolullah ﷺ, but which is neither Fardh (obligatory) nor Waajib (compulsory). At the outset, Sunnah can be classified into the following two categories:

1. **Sunnah Mu'akkadah:** These are such acts of Sunnah that Rasulullaah ﷺ carried out regularly and emphatically encouraged others to do as well. Acts that the Khulafaa Raashideen also carried out with such regularity will also fall into this category. Examples are using the Miswaak before wudhu, bathing on Fridays and performing 20 Rakaahs of Taraaweeh salaah.
The status of Sunnah Mu'akkadah acts is that the one who carries it out will be greatly rewarded. As for the one who neglects them, he will be guilty of a Makrooh Tanzeehi act because such behaviour is closer to Halaal than Haraam. However, the Shari'ah desires that they are not omitted. Furthermore, such acts perfect and complete the Deen and neglecting them without valid reason leads one to deviation and is a cause of great deprivation.
2. **Sunnah Ghayr Mu'akkadah** (also referred to as *Mandoob* and *Mustahab*): These are acts that Rasulullaah ﷺ did occasionally and also encouraged others to do e.g. facing the Qibla while performing wudhu, stopping all activities to listen to the Adhaan, starting the acts of wudhu from the right side, etc.
The status of Sunnah Ghayr Mu'akkadah acts is that while the person carrying out the act will be rewarded, one who does not will not be sinful. However, he will be depriving himself of great rewards.

In Terms of the Deed, Sunnah Actions are divided into two Categories; Sunnah Ayn and Sunnah Kifaayah

FARDH AYN: This is that act that is Masnoon for each and every *Mukallaf* to carry out. Examples of this are the Sunnah salaahs, bathing on Fridays and the days of Eid, etc.

FARDH KIFAAYAH: This is that act that is Masnoon for all people collectively to carry out but if some of them do carry it out, the rest need not do it. An example of this is the I'tikaaf during the last ten days of Ramadhaan.

(4) Haraam

If the proof for something being prohibited is Qat'ee (explicitly stated in the Qur'aan or Mutawaatir Ahadeeth), then the act will be classified as Haraam, e.g. delaying the Fardh salaah until the time has expired, lying, oppressing, etc.

The Status of Haraam

The person perpetrating the act will be liable for punishment while the one who abstains will be rewarded.

Makrooh

Makrooh is divided into two categories:

Makrooh Tahreemi

These are acts that the Shari'ah has prohibited, but the proof of which is Dhanni and not Qat'ee. Examples are delaying the Asr salaah until after the sun yellows, performing salaah when the need is strong to relieve oneself, fasting on the days of Eid, using utensils of gold and silver, etc.

Makrooh Tanzeehi

These are acts that the Shari'ah detests, but about which no punishment has been specified, such as wasting water when performing wudhu, not using the Miswaak, etc.

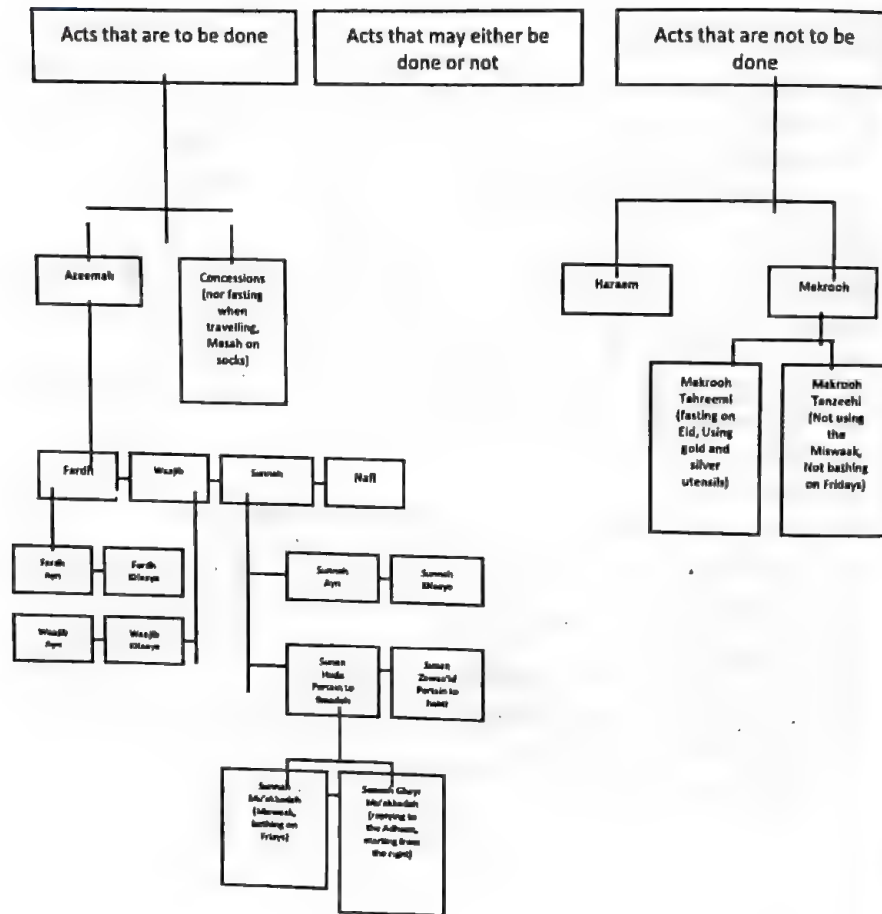
The status of a Makrooh Tanzeehi act is that although the perpetrator will not be liable for punishment, the one who abstains will be rewarded.

(5) Mubaah

These are acts that the Shari'ah neither instructs doing nor does it instruct abstaining. Examples are eating, trading, etc.

The status of Mubaah acts is that carrying them out will neither warrant punishment nor rewards. However, one will be rewarded when carrying them out with good intentions, in which case they will be like Mustahab acts. Examples are eating with the intention of entertaining one's guest, sleeping during the day with the intention of engaging in Ibaadah during the night and wearing good clothes with the intention of displaying the bounties of Allaah.

The Injunctions of the Shari'ah at a Glance



Some Technical Definitions Concerning the Differences amongst the Fuqahaa of the Ahnaaf

The scholars of the Hanafi Madh'hab have a few terminologies they use to identify differences of opinion between the Ahnaaf Fuqahaa. When it is Imaam Zafar رحمہ اللہ and Imaam Hasan bin Ziyaad رحمہ اللہ who differ with Imaam Abu Haneefah رحمہ اللہ, their names are cited explicitly. However, when it is Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammad رحمہ اللہ who differ with Imaam Abu Haneefah رحمہ اللہ, they are referred to in the following terms:

Shaykhayn: This term refers to Imaam Abu Haneefah رحمہ اللہ and Abu Yusuf رحمہ اللہ when they share an opinion that is contrary to that of Imaam Muhammad رحمہ اللہ.

Tarfayn: This term refers to Imaam Abu Haneefah رحمہ اللہ and Imaam Muhammad رحمہ اللہ when they share an opinion that is contrary to that of Imaam Abu Yusuf رحمہ اللہ.

Saahibayn: This refers to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammad رحمہ اللہ when they share an opinion that is contrary to that of Imaam Abu Haneefah رحمہ اللہ.

The following are also a few terminologies to note:

Zahirur Riwaayah: This refers to the six famous books of Imaam Muhammad رحمہ اللہ, which are Jaami Kabeer, Jaami Sagheer, Mabsoot, Siyar Kabeer, Siyar Sagheer and Ziyaadaat.

Matan: In the Hanafi Fiqh, the word Matan refers to a book in which the most commonly accepted and famous opinions of Imaam Abu Haneefah رحمہ اللہ are mentioned and which has been written by a leading Hanafi Faqih of the time such as Imaam Tahaawi رحمہ اللہ, Imaam Karkhi رحمہ اللہ, Imaam Qudoori رحمہ اللہ, etc. The most trusted of all these are the following four:

1. Wifaayah
2. -Kanzud Daqa'iq
3. Qudoori
4. Majma'ul Bahrayn or Mukhtaar

A Brief Biography of the Author of Qudoori

Name and Lineage

His name was Ahmad and was also known as Abul Husayn and Qudoori and he hailed from Baghdad. His father's name was Muhammad, also known as Abu Bakr. His grandfather's name was Ja'far bin Hamdaan.

Why was he called Qudoori?

In his book Wafayaatul A'yaan, the historian Ibn Khalikaan writes that the word Qudoori is the plural of the Arabic word Qidrm meaning

'pot'. He, however, admits that he has no knowledge of how the name became attached to the author. The author of *Madinatul Uloom* writes that the name refers to a person who either manufactured or sold pots and may also refer to a person from the town of Qudoor.

Acquisition of Knowledge

Imaam Qudoori رحمہ اللہ studied Fiqh and Hadith from Hadhrat Abu Abdullaah Muhammad bin Yahya bin Mahdi Jurjaani رحمہ اللہ, who passed away in the year 398 A.H. and was a student of Imaam Abu Bakr Ahmad Jassaas رحمہ اللہ. Through his teachers, he was attached to Imaam Muhammad Shaybaani رحمہ اللہ through five links. He acquired the knowledge of Ahadeeth through several teachers, the most eminent amongst them being Khateeb Baghdadi رحمہ اللہ and Chief Justice Allaama Daamghani رحمہ اللہ.

Acknowledgements of his Accomplishments

Hadhrat Khateeb Baghdadi رحمہ اللہ said about Imaam Qudoori رحمہ اللہ, "I have recorded Ahadeeth from him. He was exceptionally truthful, but very seldom narrated Ahadeeth."

Allaama Sam'aani رحمہ اللہ writes, "He was a Faqih and extremely truthful. It was because of him that Iraq led the way in the Fiqh of Imaam Abu Haneefah رحمہ اللہ and reached perfection. He was very honoured, his writings and lectures very prolific and he was always in the recitation of the Qur'aan."

Imaam Qudoori رحمہ اللہ is also highly praised in the book *Tabaqaatul Fuqahaa*.

Respect for Scholars

It has always been the hallmark of our pious predecessors to be courteous and to show respect to other scholars regardless of their differences of opinion. Although academic debates always took place between Imaam Qudoori رحمہ اللہ and the Shaafi'ee scholar Sheikh Abu Haamid Isfaraa'ini رحمہ اللہ, he always revered the Sheikh and held him in high esteem.

His Status in Fiqh

Ibn Kamaal has classified Imaam Qudoori رحمہ اللہ as well as the author of *Hidaayah* in the fifth category of *Fuqahaa*, who are scholars who state which of the opinions of the Imaam of the Madh'hab are preferred and which are not. However, most scholars agree that Imaam Qudoori رحمہ اللہ ought to be ranked higher than Qaadhi Khan رحمہ اللہ, but even if this is not accepted, then at least ranked with him in the third category.

His Demise

Imaam Qudoori رحمہ اللہ responded to the call of death on Sunday 5th of Rajab 428 A.H. at the age of 66 in Baghdad. He was buried the same day in Daraabi Khalf, but then moved to Shaari Mansoor, where he now rests beside Hadhrat Abu Bakr Khwarzimi Hanafi رحمہ اللہ.

His Writings

1. *Tajreed* in seven volumes, which discusses the differences between the Hanafi and Shaafi'ee scholars. He started dictating this book in the year 405 A.H.
2. *Masaa'ilul Khilaaf* which discusses only the differences between Imaam Abu Haneefah رحمہ اللہ and his students without citing substantiations.
3. *Kitaabut Taqreeb* in which he discusses these issues with their substantiations.
4. A commentary of *Mukhtasir Karkhi*
5. A commentary of *Adabul Qaadhi*

Books Written Concerning Mukhtasar Qudoori

This Matan has been written approximately a thousand years ago and comprises of 61 parts with 62 chapters, covering about 12000 *Masaa'il*. It has been continuously studied from the time it has been written to this day and has been so highly acclaimed that Taash Kubra Zaadah states, "Ulema have been so blessed with this book that they have survived plagues and calamities with it."

The author of *Misbaah Anwaarul Ad'iyya* writes that the person who memorises the book will be saved from poverty. He also writes that whoever studies it under a pious teacher and then makes du'aa upon completion, he will receive as many Dirhams as there are *Masaa'il* in the book. *Kashfudh Dhunoon* and other books also state similar accounts. The least that can be expected is that the effects of the piety and blessed nature of the author will fall upon the person who studies it.

The author of *Jawaahirul Mudhiyya* writes that his brother Muhammad bin Muhammad bin Muhammad bin Nasrullaah bin Saalim bin Abu Awfa Qurashi who passed away in the year 722 A.H. had committed the entire book to memory.

A Miracle

Allaama Badrud Deen Ayni رحمہ اللہ writes in his commentary of *Hidaayah* that after completing his book, Imaam Qudoori رحمہ اللہ took it along with him for Hajj. After completing the Tawaaf, he made du'aa saying, "O Allaah! Please inform me of any error that I may have made

in it." When he then read through every line of the book, he noticed that there were five or six places where the writing had been erased.

A Brief Biography of the Author of Tasheelud Dhuroori

Hadhrat Mufti Muhammad Aashiq Ilahi Barni Bulandshahri

Madani رَحْمَةُ اللهِ عَلَيْهِ

Birth and Tuition

Hadhrat Mufti Muhammad Aashiq Ilahi رَحْمَةُ اللهِ عَلَيْهِ was born in the year 1343 A.H. in the town of Basti in the Bulandshahr district. He memorised 19 parts of the Qur'aan in only six months and acquired his foundational learning in Hasanpur, Muradabad and Aligarh. In the year 1360 A.H. he enrolled in the Mazaahirul Uloom institution in Saharanpur, where he studied under great scholars for three years. He then taught in Mewat, Delhi and Calcutta and later in Madrasah Hayaatul Uloom in Muradabad. Upon the request of the Grand Mufti of Pakistan Hadhrat Mufti Muhammad Shafi رَحْمَةُ اللهِ عَلَيْهِ, he then started to teach in the Darul Uloom in Karachi, where he served for 12 years until finally moving to the Haramain in the year 1396 A.H.

His final journey outside the blessed lands was in the year 1419 A.H. when he accepted the invitation to attend a gathering of scholars who had qualified at Daarul Uloom Karachi fifty years before. Despite his illness, he undertook this journey only because of his love for the institution. However, the yearning to be buried in Jannatul Baqee in Madinah did not permit him to stay long and he returned the same year to Hijaz.

His Extreme Care for Cleanliness

Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ was extremely particular about cleanliness and gave due attention to wudhu and Ghusl. He also ensured that the place where he performed salaah and all his utensils were meticulously cleaned.

His Ibaadah and Spiritual Exercises

Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ gave much attention to reciting the Masnoon du'as and would not go to bed until he had recited the Surahs that are recited at night such as Surah Mulk and Surah Sajdah. He also always recited Surah Yaseen in the mornings and Surah Waq'ah after Maghrib. His every living moment was spent in the obedience of Allaah and Rasoolullah ﷺ and in Ibaadah. He engaged in Dhikr between Fajr and sunrise and stood up from his place of salaah only after performing the Ishraq salaah. During this time he did not speak to anyone so as to maximise on the reward of Hajj and Umrah received through this deed. He gave special attention to

reciting Durood on Fridays and devoted all his time between Asr and Maghrib to this.

His Nights

It was his practice to teach and write books all night, during which time he would sleep for only an hour. He would then sleep between the Ishraq and Zuhur salaahs, but never failing to engage in Dhikr until his eyes closed.

His Sincerity

All his writings and teaching was done solely for the pleasure of Allaah. He therefore did not copyright any of his writings because he anticipated rewards only from Allaah. Many of his books were sold in thousands, grossing large sums of money for the publishers. It was astonishing indeed when someone printed his book in their name and without any displeasure, all he said was, "Brother! The purpose is to spread the Deen and to get it to the people. What harm will there be if my name is not there?" He never allowed his fame to precede him and would even purchase his own books, such as his Tafseer since the publishers gave him nothing.

His Du'aa for his Children and Progeny

He would always make du'aa saying, "O Allaah! Accept my children for the service of your Deen and allow our progeny to be steadfast upon the Deen." He would weep as he made this du'aa even on the plains of Arafat. He performed Hajj 22 times, while the number of times he performed Umrah is known only to Allaah. May Allaah grant us all steadfastness in Deen and allow us to be amongst the Ambiyaa ﷺ, Siddiqueen and martyrs. Aameen.

Some Fascinating Incidents

His Abstinence

A man from South Africa once gave Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ a sum of eleven thousand Riyals as a gift. Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ said to him, "Please take this back because I have neither the place to store it nor anywhere to spend it." The man entreated, "I have already made the intention for you to have it and cannot take it back." Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ responded by saying, "I am not responsible for your intention, so please take it." The man refused and left, leaving the money there. Without laying a hand on it, Hadhrat Mufti Sahib رَحْمَةُ اللهِ عَلَيْهِ instructed one of his students to give the money to the company that printed his Tafseer with instructions to use it to pay for as many sets of the Tafseer as possible and to then distribute the sets to people. He once said, "Brother! The less you have of the world, the better."

Three or four days before he passed away, someone from America related to Hadhrat Mufti Sahib رحمہ اللہ that he owned factories in America and had now opened up a factory in Karachi as well. Because he even disliked specking of worldly matters, Hadhrat Mufti Sahib رحمہ اللہ said to the man, "What fruits have people acquired by amassing worldly wealth? Never allow the world to deceive you and prepare for the Akhirah." He then deliberated upon the transitory nature of the world and its meanness. When the man later complained that Hadhrat Mufti Sahib رحمہ اللہ was very stern, someone told him, "One needs to think before speaking to the pious."

His Taqwa and Abstention from Anything Doubtful

Hadhrat Mufti Sahib رحمہ اللہ exercised the highest level of Taqwa and vehemently abstained from anything doubtful. He would never touch any meat until someone assured him that he was present when Bismillaah was recited as the animal or bird was slaughtered. He would not even buy Roti or any other gravy from a restaurant that served chicken slaughtered in Brazil or France.

When someone once invited him to a meal, Hadhrat Mufti Sahib رحمہ اللہ said, "Your earnings are not Halaal because you sell chicken that is slaughtered overseas." "I have sold the restaurant," the man said, "and now have a shop that sells items for ten Riyaals." Hadhrat Mufti Sahib رحمہ اللہ still refused saying, "That is also from the same money." When the person then spread out his prayer mat for Hadhrat Mufti Sahib رحمہ اللہ to perform the Witr salaah, Hadhrat Mufti Sahib رحمہ اللہ told him to remove the mat saying, "I do not deem it correct to perform salaah on it."

His Courage in Speaking the Truth

When a person once came to ask him a question in the Masjidun Nabawi, Hadhrat Mufti Sahib رحمہ اللہ said to him, "I still have my salaah to complete. You may sit awhile." When he had completed his salaah and the man was about to ask the question, Hadhrat Mufti Sahib رحمہ اللہ interrupted him saying, "Why do you shave your beard?" "Please make du'aa for me," the man responded. "Do I have to make the du'aa while you do nothing?" Hadhrat Mufti Sahib رحمہ اللہ asked. The man then made a resolution saying, "Insha Allaah, I shall keep a beard according to the Sunnah." "Then make a promise now," Hadhrat Mufti Sahib رحمہ اللہ said. The man then promised to do so.

Dislike for acts of Bid'ah

Hadhrat Mufti Sahib رحمہ اللہ was vehemently opposed to acts of Bid'ah and its perpetrators. A Sheikh from Makkah who perpetrated such acts once happened to be in the same group as Hadhrat Mufti

Sahib رحمہ اللہ when he was on Hajj. When the Sheikh came to meet Hadhrat Mufti Sahib رحمہ اللہ, he did not know who the Sheikh was. After leaving, when Hadhrat Mufti Sahib رحمہ اللہ was informed who the Sheikh was, he immediately repented to Allaah saying, "In my ignorance I responded to the greeting of a perpetrator of Bid'ah and entertained him!" When a student of the Sheikh once requested permission to meet Hadhrat Mufti Sahib رحمہ اللہ, he said, "Tell him that he may come in only if he repents from Bid'ah. Otherwise, he has no permission to enter."

His Love for Madinah

Hadhrat Mufti Sahib رحمہ اللہ was so deeply in love with the city of Rasulullaah ﷺ that he travelled only twice to Pakistan in 26 years and otherwise left the city only to perform Hajj and Umrah. When he first arrived in Madinah, Hadhrat Mufti Sahib رحمہ اللہ lived in a house close to the walls of Jannatul Baqee and would take his two sons to attend the Madrasah of Sheikh Abdul Qadir Marghilaani close to Masjid Ijaabah. Because the road was sandy, the feet and clothing of Hadhrat Mufti Sahib رحمہ اللہ would get dusty. This made him jubilant and he said, "The pure sand of Madinah has touched us." He would then recite a couplet, which meant:

"Don't even ask about our abode of honour

We are living in the neighbourhood of Muhammad ﷺ

O Allaah never deprive us of his rewards and never put us to trial after he has left"

His Demise and Final Deed

The last deed that Hadhrat Mufti Sahib رحمہ اللہ performed was to perform the Fajr salaah in the Masjidun Nabawi and to then recite the Qur'aan. He then passed away on the 13th of Ramadhaan 1422 A.H. corresponding with the 28th November 2001.⁵

⁵ The above has been adapted from the book Darbe Mu'min by Mufti Muhammad Taqi Uthmaani رحمہ اللہ and the words of Hadhrat Moulana Abu Ahmad, the son of Hadhrat Mufti Aashiq Ilaahi Sahib رحمہ اللہ.



Preface

All praise is due only to Allaah. We laud Him and beseech His aid and beg forgiveness only from Him and believe in Him and rely solely on Him. We seek salvation in Him from the evils of our inner selves and the vices of our actions. There is none to misguide one whom Allaah intends to guide. I bear witness that there is no one worthy of worship but Allaah, the One who has no partner. I also testify that Hadhrat Muhammad ﷺ is the faithful servant and the Last Rasul of Allaah. May Allaah Ta'ala's mercy be on him, his family and his Sahabaah رضي الله عنهم and may He bless them and raise their status.

"Mukhtasar al Quduri" is by Abdul Hasan Ahmad ibn Muhammed ibn Ahmad ibn Jafar ibn Hamdan al Quduri al- Baghdadi, the Hanafi jurist born 362 AH. Al Quduri due to selling of pots (qudur).

The number of issues addressed directly or indirectly or by inference is 12, 500 discussing a wide scope of Fiqh – includes worship, business, personal relations, personal and judicial matters.

It is related that after writing it he took it to the Ka'bah, hung it on the cover, asked Allaah to bless him in it. This surely looks fulfilled. Many commentaries are written on it and forms a part of curriculum in most traditional Darul Uloom.

In some case Al Quduri presents various views which requires further investigations to determine the acted upon opinion for the age.

"At – Tashil ad Dururi" of the laws of Quduri is commentary in a simple question and answers format which is universally accepted as one of the best teaching and learning methods. Thus having 2428 Questions.

It's origin is Arabic. It simplifies the difficult and tedious areas. We have with our team headed by Moulana Suleman Kindi, a able capable translator made an earnest effort to render the work into English:-

We have also:-

- 1.) Numbered the Questions;
- 2.) Highlighted the Questions;
- 3.) Highlighted some principles;
- 4.) Included some basic information on Fiqh which will help the student, scholar and general public;
- 5.) Brief on the life of Mufti Aashiq Illaahi Muhajir Madani;
- 6.) Translated the preferred opinion as researched by Mufti Aashiq Illahi;

We praise Allaah Jalla Majdahu for once again allowing us to conclude another major work, the others being:-

- 1.) Illuminating Discourses of the Noble Quraan – 10 volumes;
- 2.) Hayatus Sahabah رضي الله عنهم – 3 volumes;
- 3.) Quraan Made Easy;
- 4.) Fatawa Rahimiyah – 3 volumes;
- 5.) Nurul Izza;
- 6.) Sharh Nugbatul Fikr;
- 7.) Tambighul Ghafileen;
- 8.) Aqaaidul Islaam – Idrisi;
- 9.) Aqaadul Tahaawi – with commentary;
- 10.) 360 Books on various topics.

Currently working on "Rahmatullaahul – Waseeya" by Allaamah Saeed Palanpuri. Commentary of "Hujjatullaah Baaligha" by Shah Waliullaah رحمته الله.

Request for duaas and If any reader has suggestion on our translation or interpretation, kindly do not hesitate to inform us in a civil manner.

A. H. Elias (Mufti)

1/ 11/ 08

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Foreword

All praise be to Allaah Who has showered us with His bounties. He commanded us with purity and worship and that we avoid filth and sin. He sent His Rasul ﷺ with guidance and the true Din, who explained what Allaah had legislated for His slaves in all matters of life. He distinguished between the permissible and the forbidden. He expounded the laws of Salah, Zakah, Hajj and Fasting, as well as business and related laws and laws pertaining to lineage and custodianship. In addition he explained the penal laws, retaliation and striving against the enemies of Islaam.

Allaah's salutations be upon him, his family and his Companions. They were guides to humanity and lamps in darkness. Salutations upon those who taught the Book of Allaah and the Sunnah of His Rasul ﷺ, and derived laws there from. They codified them in books and simplified them for special ones and the masses. May salutations be continuous upon them.

This book is a simplification of the rules and regulations found in Kitabul Quduri. I have written them in the form of questions and answers. This is to make it quicker for the beginner to understand and easier to memorise. At times I have not followed the order of al-Quduri, in that I placed some matters forwards or backwards. I have also added certain rules from the books of the Fugaha when I saw a benefit in that for the students or a necessity based on the conditions of people. For the purposes of ease, I have added headings which are not found in the book of al-Quduri, may Allaah have mercy upon him. I thus praise Allaah that the laws have thus been compiled an easier and clearer text which I have named, "at-Tashil ad-Daruri limasail al-Quduri."

I ask Allaah to accept this effort. May He benefit His creation through it, just as He benefited them through the original. He is indeed a generous Rabb. All praise be to Allaah, Rabb of all the worlds.

Biography of al-Imam

Abul Hasan al-Quduri

Allaah's mercy be upon him

Imaam Al-Khatib رحمه الله says in "Tarikh Baghdad" (377/4):

He is Ahmad bin Ja'far bin Hamdan Abdul Husayn, the Faqih, known as al-Quduri. He studied under Ubaydullah bin Muhammed al-Hushabi. He did not narrate much. I have written about him and he was truthful. He attained a rank in Fiqh because of his intelligence. The leading companions of Imaam Abu Hanifa رحمه الله would come to him in Iraq because they greatly valued him. He was widely known. He was handsome and spoke swiftly. He was always reading the Quran. I have heard Abu Bashir Muhammed bin Umar al-Wakil and the Judge Abul Qasim at-Tannukhi say that al-Quduri was born in 362 Hijri. Ibnul Imad says in "Shazaratuz Zahab" (233/3):

Abu Bakr al-Khatib, the author of "at-Tarikh" narrated from him. He wrote the Mazhab in his famous "al-Mukhtasar," and other works. He used to debate the Shafi'i Faqih Abu Hamid al-Asfaraini but used to show him great honour.

In "Fawaidul Bahiyah"

Ahmad bin Muhammed bin Ahmad Abul Husayn al-Baghdadi al-Quduri – it is said that he was linked with a village near Baghdad called Qadurah. It is also said that he was linked with the sale of pots [qudur]. He is the author of the blessed "al-Mukhtasar" which circulates amongst students. He learnt Fiqh from the Faqih Abu 'Abdillah Muhammed bin Yahya al-Jurjani who learn from Ahmad al-Jassas who learnt from Ubaydullah Abul Hasan al-Karkhi who learnt from Abu Sa'id al-Burda'i who learnt from Musa ar-Razi who learnt from Muhammed رحمه الله.

It is also stated therein that al-Quduri either comes from the making of pots, the selling of pots or the name of a village. Allaah knows best.

The author of "Kashfuzh Zhun" says:

The author of "Misbah Anwaril Ad'iyah" says that the Ahnaf seek blessings from reading al-Mukhtasar during times of calamity. It is s

blessed book. Whoever memorises it remains safe from poverty. It is even said that whoever reads it before a pious teacher who prays for his blessings upon the completion will receive dirham to the number of masail in the book. In some commentaries of al-Majma' it is said that there are 12000 masail in it.

The author of "Mafatih Sa'adah" says:

The 'Ulama seek blessings from al-Mukhtasar. They have experienced the blessings of reading it during difficulties and plague.

Kashfuzh Zhun states:

Abu 'Ali ash-Shashi said, "He who memorises this book has the best memory of our companions. He who understands it has the best understanding of our companions."

It is a known fact that the author of "al-Hidayah" first wrote "al-Bidayah" about Fiqh. In it he gathered the masail of al-Quduri and "al-Jami' as-Saghir," of al-Imam Muhammed bin al-Hasan ash-Shaybani رحمهما الله.

The author of "Miftah Sa'adah," (129/2) says:

The author of al-Hidayah used specific terminologies. When he says, "Qala" it is a masalah of al-Quduri or al-Jami' as-Saghir, or it is mentioned in al-Bidayah. When it is not mentioned in any of these books he does not say, "Qala." Another is that he first mention the masalah from al-Quduri at the beginning of each chapter and from al-Jami' as-Saghir at the end. If there is a kind of difference between the two then he will specify al-Jami' as-Saghir.

The author of Miftah Sa'adah (145/2) mentions that al-Quduri is the commentary of Mukhtasar al-Karkhi. He compiled "at-Tajrid" in seven volumes comprising the differences between ash-Shafi'i and Imaam Abu Hanifa رحمهما الله. He began dictating it in 405 Hijri. He also compiled Kitabut Taqrib, comprising the differences between Imaam Abu Hanifa رحمهما الله and his students without mentioning any proofs. He rewrote at-Taqrīb with proofs.

Al-Hafizh az-Zahabi mentions in "Siyar A'lamin Nubala" (575/17): He narrated from 'Ubaydillah bin Muhammed al-Hawshabi and Muhammed bin 'Ali bin Suwad al-Muaddib and al-Khatib and Judge

Abu 'Abdullaah ad-Damaghani narrate from him. He died in Rajab 424 Hijri at the age of 66.

Tazkiratul Huffazh (1086/3) mentions the same year of his death. His further biography can be read in "al-Ansab" of as-Sam'ani (352/10); "Wafyatul A'yan" of Ibn Khallikan (86/1); "al-Bidayah wan Nihayah" (40/12); "Hidayatul 'Arifin" (73/1); Jawahirul Madiyah" (247/1).

The Books of Zhahir ar-Riwayah

The term "Zhahirur Riwayah" [Apparent Narration] occurs over and over again in the books of the Ahnaf. It is therefore necessary for the student to know what this term means.

Know that Ibn 'Abidin ash-Shami wrote in his booklet, "Uqud Rasmil Mufti":

The books of Zhahirur Riwayah have come;
As six and as basic principles [usul] they are also called.
Muhammed ash-Shaybani wrote them;
In it he wrote the Mazhab of Nu'man.
Al-Jami' as-Saghir and al-Kabir;
And as-Siyar as-Saghir and al-Kabir.
Then az-Ziyadat with al-Mabsut;
They have been continuously narrated with reliance.
There are also the masail of an-Nawadir;
ts chains are in books which are not Zhahir.
Hereafter are the Masail of an-Nawazil;
The Shaykhs have made takhrij of them with proofs.

Ash-Shami then says:

Now that the Masail of our Hanafi 'Ulama are on three levels:

1. Masail called Usul or Zhahirur Riwayah. These are Masail narrated from the founders of the Mazhab, viz: Imaam Abu Hanifa رحمهما الله, Imaam Abu Yusuf رحمهما الله and Imaam Muhammed رحمهما الله. They are called the "Three 'Ulama." They are sometimes joined with Imaam Zufar and al-Hasan رحمهما الله and others who took their Fiqh from Imaam Abu Hanifa رحمهما الله, but the overwhelming masail of the Zhahirur Riwayah are from the three or one of them.

The Masail of Zahirur Riwayah are what are found in the following books: al-Jami' as-Saghir, al-Jami' al-Kabir, as-Siyar as-Saghir, as-Siyar al-Kabir, az-Ziyadat and al-Mabsut.

They are called Zahirur Riwayah because they are narrated from Muhammed ﷺ by reliable narrators. They are established from him by tawatur (continuously and in number) or are famous from him.

2. The Masail of an-Nawadir are masail of the mentioned 'Ulama of the Mazhab but are not narrated in the above mentioned books. They are narrated in other books, whether written by Muhammed ﷺ or someone else.

3. Fatawa and Waq'at are Masail which the latter Mujtahidun have deduced when asked about them and they did not find any narration about it from the early 'Ulama of the Mazhab.

After Imaam Malik bin Anas ﷺ came Imaam Muhammed bin Idris al-Muttalibi ash-Shafi'i ﷺ. After studying by Imaam Malik ﷺ, he went to Iraq to study under the students of al-Imam Abu Hanifa ﷺ. He then combined the ways of the people of al-Hijaz with that of the people of Iraq. He made his own Mazhab and differed with Malik in much of his mazhab. After the two of them came Imaam Ahmad bin Hambal ﷺ. He was amongst the great Muhaddithun. His students studied under the students of al-Imam Abu Hanifa ﷺ and with their vast knowledge of Hadith another Mazhab arose.

[Muqaddamah Ibn Khaldun pp. 447-8]

Servants of Fiqh

Fiqh: 'Abdullaah bin Mas'ud ﷺ planted the seeds, 'Alqamah watered it. Ibrahim an-Nakha'i harvested. Hammad threshed it. Imaam Abu Hanifa ﷺ milled it. Imaam Abu Yusuf ﷺ made the dough. Imaam Muhammed ﷺ baked the bread. All the other people eat from that bread.

Planted It: Hadhrat 'Abdullah bin Mas'ud ﷺ, the great Sahabi, was the first to seek about deducing subsidiary laws. He was amongst the first Muslims and fought at Badr. He was amongst the senior 'Ulama of the Sahabah.

Watered It: 'Alqamah bin Qays bin 'Abdillah bin Malik an-Nakhal helped him and clarified it. The great Faqih was the paternal uncle of al-Aswad bin Yazid and the maternal uncle of Ibrahim an-Nakha'i. He was born during the life of Rasulullaah ﷺ. He learnt Quran and knowledge from Ibn Mas'ud, 'Ali, 'Umar, Abud Darda, and 'Alshah.

Harvested: Gathered the separate and rare knowledge and put it into a form people could benefit from. Ibrahim bin Yazid bin Qays bin al-Aswad Abu 'Imran an-Nakha'i al-Kufi. The famous Imam was pious and abstained from the world.

Threshed: Hammad bin Muslim al-Kufi was the teacher of Imaam Abu Hanifa ﷺ. He made an effort to revise and clear it.

Milled: Hadhrat Imaam Abu Hanifa an-Nu'man ﷺ was the Imam of Imams and Lamp of the Ummah. He increased the principles and expanded the subsidiary masail and clarified its style. He was the first to order Fiqh in the subjects and chapters they are found in today. Malik followed him in this in his Muattah. Those before him had to rely upon their memory.

Dough: With his deep insight into the laws of the Imam and his usul, he made an effort to derive more subsidiary laws. The student of al-Imam Abu Hanifa ﷺ, Imaam Abu Yusuf Ya'qub bin Ibrahim ﷺ was the chief Judge. Al-Khatib narrates in his "at-Tarikh" that he was the first to compile a book of the principles of Fiqh according to the Mazhab of Imaam Abu Hanifa ﷺ. He taught the Masail and spread the knowledge of Imaam Abu Hanifa ﷺ throughout the earth.

Bread: He increased even more in subsidiary masail and clarifying them. He wrote them in such a way that one does not need anything else. Al-Imam Muhammed bin al-Hasan ash-Shaybani ﷺ was the student of both Imaam Abu Hanifa ﷺ and Imaam Abu Yusuf ﷺ. He wrote the mazhab of Imaam Abu Hanifa ﷺ and compiled his Fiqh.

All the other people eat from that bread: that is the bread of Imaam Muhammed ﷺ which he baked from the dough of Imaam Abu Yusuf ﷺ which Imaam Abu Hanifa ﷺ had milled. May Allaah's mercy be on them all.

[Extracted from the Preface of Ad-Durr al-Mukhtar and Raddul Muhtar]

Kitabut Taharah – The Book of Purity

Question 1) Why do the Jurists begin their books with the rules of Taharah?

A: Taharah is amongst the conditions for the validity of Salah. Salah is the second of the Five Pillars of Islaam. They therefore begin with the rules of Taharah, followed by Salah.

Question 2) What is the meaning of Taharah linguistically and in Shari'ah?

A: Taharah is linguistically cleanliness. In Shari'ah it is the removal of al-Hadath al-Asghar [minor impurity] and al-Hadath al-Akbar [major impurity], and filth from clothing, body and places of Salah.

Question 3) What is al-Hadath al-Akbar?

A: When a bath of the whole body becomes obligatory upon a man or a woman the state is called al-Hadath al-Akbar. After the bath the Hadath is removed. There bath is called Ghusl or Ightisal.

Question 4) What is al-Hadath al-Asghar?

A: When the washing of certain organs and wiping some becomes obligatory upon a man or a woman in order to perform Salah it is called al-Hadath al-Asghar. This washing is called Ghasl or Wudu. The person in a state of wudu is called mutawaddi.

Question 5) List those organs which must be washed or wiped during wudu?

A: They are:

1. The face from the hairline to bottom of the chin; and from the right ear-lobe to the left ear-lobe.
2. The hands from the fingertips to the elbows.
3. The feet from the tips of the toes till the ankles – these three organs must be washed completely or the wudu is invalid. Even if the space of a hair is not washed he will not be mutawaddi until water reaches that place.
4. The part which must be wiped is the head. It is Sunnah to wipe the entire head, but if a quarter of the head is wiped the Fard amount is sufficed.

Question 6) Are the elbows and ankles included in the washing?

A: Yes, they are included in the Fard of wudu.

Question 7) From where have you learnt that it is Fard to wash the three organs and to wipe the head during wudu?

A: Allaah Ta'ala has mentioned them in His Kitab:

O you who believe, when you stand for Salah wash your faces and your hands till the elbows and wipe your heads and [wash] your feet till the ankles. [al-Maidah:6]

Question 8) What is the proof that it is Fard to wipe at least a quarter of the head?

A: The proof is the Hadith of al-Mughirah bin Shu'bah رضي الله عنه. He said, "Verily the Nabi ﷺ performed wudu and wiped his forelocks." [Muslim, Chapter of wiping the leather socks].

Question 9) What are the Sunnahs of Wudu?

A: They are:

1. Intention - he intends removing Hadath or making permissible that which is not permitted except with wudu.
2. Washing the hands till the wrists thrice at the beginning of wudu. He should wash properly if he has arisen from sleep. He should therefore wash them before placing them in the water vessel.
3. Mentioning the Name of Allaah before beginning wudu.
4. Using Miswak [toothstick].
5. Rinsing the mouth thrice.
6. Placing water in the nostrils and blowing it thrice.
7. Wiping the entire head.
8. Wiping the ears.
9. To interlace the fingers through each other.
10. To pass the fingers through the beard.
11. Washing each part thrice.
12. Following the order as mentioned in the Noble Quran. He thus washes his face first; then the hands till the elbows; then wipes the head; then washes the feet till the ankles.
13. To begin each time with the right. He thus washes his right hand then the left hand. In the same way he begins with the right foot then the left.
14. To wash the next part without break.

15. To wipe the neck.

Question 10) When a man or a woman has been purified of al-Hadath al-Asghar by means of wudu, when does that Taharah terminate?

A: This Taharah is terminated by any of the following factors. They are called nullifiers of wudu:

1. Emergence of excreta.
 2. Conviction that one has passed wind through the anus, whether with sound or not.
 3. Emergence of urine, "wady" (pre - semen fluid) or semen.
 4. Emergence of blood, pus or pus tinged with blood. If any of these three emerge from any place to another place it terminates the ruling of purity.
 5. Vomit if it fills the mouth.
 6. Sleeping in a lying position.
 7. To sleep while leaning or reclining against something, that if that object is removed the sleeper would fall.
 8. Where one's intelligence has been overpowered with unconsciousness.
 9. Insanity.
 10. Loud laughter whilst in a Salah which has Ruku and Sujud.
- If any of these afflict someone, he may not perform Salah till he has repeated his wudu.

Question 11) What brings about al-Hadath al-Akbar? What makes Ghushl Wajib?

A: Al-Hadath al-Akbar is brought about by one of the following:

¹ Al-Quduri has listed washing the hands before putting them in the vessel; and saying, the Bismillaah, Siwah, rinsing the nostrils, wiping the nose, takhili of the beard and fingers, and washing each part thrice as Sunnah. He then says, "It is recommended for the person making Wudu to intend Taharah, to wipe the entire head, to wash right before left, to make the wudu with continuity and to wipe the neck. He thus made these Sunan Mustahab. On the other hand, the author of *al-Hidayah* has made Bismillaah Mustahab and intention and order of washing Sunnah. Because of this difference, we have mentioned them all under Sunnah so that the beginner might not be confused. The teacher should explain that Mustahab is less emphasised than Sunnah.

1. Nocturnal emission of a male or female when sperm is ejaculated.

2. When a man enters his penis in the vagina of a woman or her anus or the anus of another man, whether sperm is ejaculated or not. The Ghushl in these cases is Fard upon both the perpetrator and the one who is penetrated. The jurists call vaginal penetration, "Ittiqa al-khatanayn".

3. Ejaculation with a gush and lust, of sperm, whether from male or female. If any of the three occur to someone, that person is called "jub" whether male or female.

4. At the end of the menstrual period.

5. At the end of the childbirth period.

Through these factors Ghushl becomes Fard, i.e. washing of the whole body, not even leaving the space of a hair except that it has been washed with water.

Question 12) Is there Ghushl for emitting semen or wady?

A: Ghushl is not compulsory by emitting these liquids. They only nullify wudu as we had mentioned.

Question 13) Are there occasion for Ghushl besides the Fard Ghushl in the Enlightened Shari'ah?

A: Yes. Rasulullaah ﷺ has made it Sunnah to perform Ghushl on the Day of Jumu'ah, the two 'ids, Ihram and staying at 'Arafah.

² Samurah bin Jundub رضي الله عنه narrates that Rasulullaah ﷺ said, "He who performed wudu for the Day of Jumu'ah, then it is good and acceptable, but he who performs Ghushl has done better." (at-Tirmizi: Chapter on Jumu'ah. "Hadith Hasan")

Ibn 'Abbas رضي الله عنه narrates that Rasulullaah ﷺ said, "Verily Allaah has made this day an 'Id for the Muslims. He who come for Jumu'ah should perform a Ghushl. If he has fragrance, let him apply it. You should use Miswak." (Ibn Majah: Chapter on Beatification on the Day of Jumu'ah)

Al-Munziri said in *at-Targhib*, "Its chain is Hasan." At-Tahawi quotes Zadan in *Sharh Ma'anil al-Athar*, Chapter on Ghushl on the Day of Jumu'ah: I asked 'Ali about Ghushl. He said, "Make Ghushl when you want to." I asked, "I am asking you about the Ghushl which is important." He said, "The Days of Jumu'ah, 'Arafah, Fitr and an-Nahr."

In *al-Mustadrak* (447/1), al-Hakim narrates from Bakr bin 'Abdillah from Ibn 'Umar رضي الله عنه: It is Sunnah to make Ghushl when one intends entering Ihram and when one intends entering Makkah.

Question 14) What are the Fard requirements of Ghusl?

A: The following are Fard in a Fard Ghusl:

1. Gargling the full mouth till the throat.
2. Entering water into the nose till its soft part.
3. Wash the entire body once.³

Question 15) What is the Sunnah method of Ghusl?

A: The Sunnah method is to begin by washing the hands. Then perform Istinja i.e. wash the front and back private parts. He should be at ease however much possible during Istinja. Remove all filth which might be on the body. Perform the Wudu which is performed for Salah. Pour water over the head and the rest of the body thrice. Pay attention to the insides of the ears, the armpits, the navel and other parts where water does not reach except with care.

Note: If the Ghusl is performed on a wooden surface, stone or tiled floor whereby the used water does not gather, he should wash his feet at the end of the Wudu as is usual. If however the used water remains in the place of Ghusl, he should delay the washing of the feet till the end of the Ghusl, after having moved to a different ground.

Question 16) Is this method of Ghusl special for one upon whom Ghusl is Fard, or for all who perform Ghusl?

A: It is general for all who perform Ghusl, whether the Ghusl is Fard or Sunnah.

Question 17) Is there exemption for woman regarding moistening her hair in the Fard Ghusl? Or is it Wajib for her to tie her braids?

A: It is not necessary for a woman to tie her braids, nor is it Wajib to wet the hair as long as water reaches the roots. This exemption is only for her whose hair is braided. If her hair is not tied like that, it is Wajib for her to wet her hair together with making the water reach the roots. In the same way it is necessary for a man to wet all his hair in Fard Ghusl, even if he has much hair.

Al-Hakim said, "Sahih according to the conditions of Muslim and al-Bukhari."
Az-Zahabi agrees.

³ As opposed to three

Question 18) Explain the rules regarding the two Hadaths.

A: When Ghusl becomes Fard upon a man or a woman, it is not permissible for them to perform Salah in that condition. They may not enter the Masjid, read the Quran, touch its manuscript [Mus-haf] – except with a detached covering, or perform Tawaf. It is permissible for them to remember Allaah Ta'ala but not to recite the Quran. The person in al-Hadath al-Asghar may not perform Salah until he has performed Wudu. In the same way, he may not perform Tawaf of the Ka'bah. He may read Quran, remember Allaah ﷻ and enter the Masjid. He may not however touch the Mus-haf of the Quran except with a detached covering.

Question 19) Through what are al-Hadath al-Akbar and al-Hadath al-Asghar removed?

A: Purification from the two Hadaths are permissible by means of water from the sky, water of valleys, water of rivers, water of springs, and wells and sea water even if it is salty. Purification of the two Hadaths is permissible with water mixed with a pure substance and one of the qualities of the water changes e.g. flowing water mixed with sand, or water mixed with soap or saffron.

Question 20) Are there waters which cannot be used to remove the two Hadaths?

A: Wudu and Ghusl are not allowed with water squeezed from a tree or fruit or water which is overcome by another substance so that the nature is no longer water, e.g. drinks, vinegar and broth etc.

Question 21) What do you say about used water [ma musta'mal] which was used to remove a Hadath or used on the body to attain closeness to Allaah [Qurbah] such as when a man already has Wudu but renews it to gain reward?

A: Neither Wudu nor Ghusl are permissible with it.

Question 22) We know that used water cannot remove a Hadath, but we want to know if it is pure or not?

A: It is pure if Hadath alone was removed with it, i.e. it was not used to remove real Najasah. It is however ghayr mutahhir (cannot

make pure), meaning that it cannot be used a second time to remove a Hadath. Thus if some drops of used water falls on clothing, water or vessels, they do not become impure.

Question 23) Can water become impure by something falling in it?

A: Allaah has created water as pure and purifying [Mutahhir]. However, it becomes impure if any impurity falls in it, be it a little or a lot. The Nabi ﷺ ordered that water be protected from impurities. He said, "None of you should urinate in standing water which does not flow and then wash in it." [al-Bukhari from Abu Hurayrah ~~SA~~ in Kitabul Wudu]

He also said, "When one of you arises from his sleep, he should not put his hands in the vessel till he has washed it thrice. For verily he does not know where his hand spent the night." [Muslim from Abu Hurayrah, Chapter on the dislike of a some making wudu inserting]

Thus if impurity falls in the water, neither Wudu nor Ghusl may be performed with it.

Question 24) What do the Jurists say about Wudu made from a body of water in which impurity fell?

A: If the body is so large that its one side does not vibrate through the shaking of the other side, Wudu is permissible from the other side when impurity falls in one side. That is because it is apparent that the impurity does not reach the other side due to its distance from the side where the impurity fell.

Question 25) What is the ruling of flowing water in which impurity fell?

A: Wudu and Ghusl are permissible with it as long as the traces of the impurity are not visible because the impurity does not remain with the flowing of the water.

Question 26) Does the death of animals in water pollute the water?

A: Yes, the death of an animal with flowing blood – bird or beast – pollute the water i.e. makes it impure. The death of an animal which

normally lives in the water does not make it impure, e.g. fish, frogs, crabs, just as it does not become impure through the death of that which does not have flowing blood e.g. bedbugs, flies, hornets and scorpions.

Question 27) You have mentioned that well-water is pure. It is possible that impurity falls in it. How then is it purified?

A: As follows:

1. If an impurity falls in a well, or a human, dog, sheep, or what resembles these in body dies in the well, then all the water is removed. The well is the purified.
2. If a dove, chicken, cat or what resembles them dies in the well, it is Wajib to remove 40 buckets of water and 50 is Mustahab.
3. If a rat, sparrow or what resembles them dies in the well, it is Wajib to remove 20 buckets of water and 30 is Mustahab.
4. This is when the corpse did not puff or disintegrate. If it puffed or disintegrated, it is Wajib to remove all the water, whether the animal was big or small.

Question 28) What size of bucket is considered when taking the water out?

A: A medium sized bucket which is used in wells.

Question 29) What calculation is made when the bucket is big?

A: If the bucket is so big that it is equivalent to ten medium sized buckets, the removal of two or three buckets will suffice when a rat or the like has died. The same calculation will be made when forty medium sized buckets had to be removed when a dove and the like died.

NOTE: The meaning of removing all the water, is that there should only be so much water that half the bucket cannot be filled.

Question 30) Some wells have a strong spring (outflow). As soon as water is taken out, it refills from the bottom. How should it be purified?

A: When the amount which was in it has been extracted, it is purified. The word of two just men who have insight in water will be regarded as to the amount.

It is narrated from Imaam Muhammed bin al-Hasan رحمهما الله, the companion of Imaam Abu Hanifa رحمهما الله, may Allaah's mercy be upon them both, that 200-300 buckets should be taken from such as well.⁴

NOTE: When a well has been declared purified, whether some or all the water had to be removed, the bucket, rope, hand of the extractor, the walls and earth of the well are all considered pure. There is no need to rewash any of these things.

NOTE: The extraction of the water is only valid after the impurity has first been removed. Even if all the water has been removed but the impurity was still there, it is not pure.

Question 31) Sometimes a rat is found and it was not known when it died. People have used its water for Wudu for Salah, washing clothing, vessels and other items. What should they now do?

A: If the rat has not become puffed or disintegrated, they should repeat the Salah of a day and night and rewash anything which was washed with that water. If the rat has puffed or disintegrated, then according to Imaam Abu Hanifa رحمهما الله they should repeat the Salah of three days and nights. Imaam Abu Yusuf رحمهما الله and Imaam Muhammed رحمهما الله say that they do not have to repeat anything until it is established when the rat fell. This is easier. Imaam Abu Hanifa رحمهما الله's opinion is safer, Allaah's mercy be on them all.

⁴ *Ad-Durr al-Mukhtar* states, "This [Muhammed's narration] is easier and that [the word of two just men] is more cautious."

Ibn 'Abidin said, "his saying that is more cautious in the text is to avoid a difference of opinion and because there are narrations to that effect." (143/1) *Al-Hidayah* states: There are two ways to calculate the amount of a spring-well narrated from Abu Yusuf رحمهما الله. The first is to dig a hole with the same breadth, width and depth as the well. The water must be taken from the well and thrown into the hole. When the hole is full the well is purified. The second method is to drop a bamboo or dry rope into the well and mark where the water reaches on it. Then extract twenty buckets for example. Put the bamboo back and see how much the water has dropped. Then proportionate to that, extract buckets in twenties and continue that procedure.

Question 32) What is the ruling of a man's or animal's Sur [leftover food or drink]?

A: The leftovers of every human are pure, male or female, junubi (one who is need of ghusl), menstruating, Muslim or Kafir. Similarly the leftovers of an animal whose flesh can be eaten are pure. The leftovers of dogs, pigs, and hunting animals are impure. The leftovers of cats, free chickens, hunting birds like falcons and hawks are Makruh (detested), as are the leftovers of animals which live in the home like rats and snakes.

Question 33) What is the ruling of Makruh leftovers?

A: When there is something else, it will be Makruh to use it, e.g, a man has pure water from which a cat drank and pure water from which a man drank. He wants to make Wudu. It will be better for him to use the leftover water of the man instead of the cat's leftover.

Question 34) If he does not have any water besides the leftover of the cat, should he make Wudu with it or make Tayammum?

A: He should make Wudu with it, not Tayammum. The water is still pure, even though it is Makruh if there is other water.

Question 35) Are there any doubtful leftovers?

A: Yes, the leftovers of donkeys and mules are doubtful because of different proofs.

Question 36) If there is water from which a donkey or mule drank from, should Wudu or Tayammum be made?

A: Both Wudu and Tayammum should be made to remove the doubt.

Question 37) Should Wudu or Tayammum be done first?

A: Any one of the two is fine.

NOTE: The leftover of a man is pure as long as he did not drink wine, or no blood flowed from his gums, or he did not vomit a mouth-full. In these cases his leftovers are impure until he rinses his mouth thrice or he swallows his saliva so many times that no impurity remains in his

mouth and lips.⁵ The leftover of a cat is impure if it ate a rat and immediately put its mouth in the water. If it does it after a while and cleaned its mouth with its saliva and the traces of the impurity are gone, then it is pure although Makruh.⁶

Question 38) What is Tayammum linguistically and in Shari'ah?

A: Tayammum linguistically means to intend or aim. In Shari'ah it is to use sand and what is of the earth to in a special manner to remove the two Hadath with the intention of Taharah. The origin of this is Allaah's Words, "If you do not find water then make Tayammum with pure earth. Then wipe your face and your arms with it." [al-Maidah:6]

Question 39) When is Tayammum permissible for the Muhdith?

A: If the Muhdith does not find water and he is travelling or outside a city; and the nearest water is a mile or more away, then he may perform Tayammum to remove the Hadath.

Question 40) Is Tayammum allowed if there is water but one is sick?

A: Yes, if a sick person fears that by using water the sickness will worsen. If a Junub fears that bathing with cold water will kill him or sicken him and he does not have the means to warm the water, then he may perform Tayammum.⁷

⁵ al-Bahr al-Raiq mentions this (133/1) and Hashiyah Ibn 'Abidin 'ala ad-Darr al-Mukhtar (149/1) gives this preference.

⁶ Al-Hidayah states, "If it ate a rat then immediately drank the water, it is impure, unless it waited a while to wash its mouth with its saliva. The exception is according to Imaam Abu Hanifa رحمته الله and Abu Yusuf. If there is a need for the water, the requirement is to pour out the water falls away. Ibnul Humam says that this is not according to Muhammed because according to him impurity is not removed except with water."

⁷ Al-Bahr ar-Raiq (149/1) states: Know that it is permissible for the Junub according to Imaam Abu Hanifa رحمته الله when he is unable to warm the water or afford the fee of the public baths in the city, and he does not have clothing to keep him warm, nor a place to shelter; as has been noted in al-Badai' and Sharh Jami' as-Saghir of Qadi Khan. The principle is that if for any

Question 41) What is the method of Tayammum?

A: Firstly to intend the removal of al-Hadath al-Akbar or al-Asghar, whichever one it is, or to intend to make Salah permissible. Strike the hands on the earth and then wipe them over the entire face so that not even the space of a hair remains which has not been wiped by the hands. Strike the earth a second time with the hands. Wipe the right arms with the left hand, from the tips of the fingers until the upper end of the elbow. Then wipe the left arm with the right hand from the finger tips until the upper end of the elbow.

Question 42) Is that Tayammum for al-Hadath al-Akbar or al-Asghar?

A: There is no difference in Tayammum for al-Hadath al-Akbar or al-Asghar. The methods we just described encompass both.

Question 43) With what is Tayammum made?

A: Tayammum is permitted with pure dust and whatever is of the earth such as sand, plaster of Paris, lime, antimony and stone even if it is smooth without any dust. It is a condition for all these substances to be pure. This is according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Yusuf رحمته الله it is not permitted except with dust and sand and they must be pure. May Allaah's mercy be on them all.

Question 44) If a house collapses and the wind blows the dust in such a way that someone's face and arms are completely covered, is the Tayammum complete? May he perform Salah like that?

A: That is not Tayammum. The required Taharah has not been obtained, because intention is a Fard of Tayammum. On the other hand, if someone is submerged in water without an intention of Ghushl, the Ghushl is made. In the same way, if the rain wets all the organs required to be wet for Wudu and the water flows over them and he

reason one is able to make the Ghushl, Tayammum is not allowed by consensus.

passes his hand over his head, the Wudu is made even though he had no intention of Wudu. That is because intention is Sunnah in Ghusl and Wudu, not Fard.

Question 45) When someone makes Tayammum, can he make Nafil Salah with it?

A: He may perform whatever Fard and Nafil he wishes with Tayammum. He may do whatever one can do after Ghusl and Wudu. There is no difference between the Taharah acquired from Wudu and Ghusl and the Taharah from Tayammum. With Tayammum one can touch the Mus-haf of the Quran, read Quran and make Tawaf.

Question 46) Is it possible for a healthy resident [Muqim] to make Tayammum in any situation?

A: A person may be healthy and resident and have water and be able to use it, but when the Janazah [funeral] has come and the Wali [guardian] is someone else, and this person fears that he will miss the Janazah if he makes Wudu, then he may make Tayammum and join in the Janazah Salah.

Question 47) If the same situation befalls someone at the 'Id Salah and he needs Wudu?

A: In the same way, the person who fears missing the 'Id Salah if he makes Wudu, may make Tayammum and join the Imam for the 'Id Salah.

Question 48) A man does not have Wudu and fear he will miss the Jumu'ah Salah if he makes Wudu. Can he make Tayammum?

A: He may not make Tayammum. He must make Wudu. If he catches with the Imam he should pray two Rak'at of Jumu'ah. If he misses him he should pray four Rak'at of Zhuhr.

Question 49) Someone is short of time, for example, he awoke just before sunrise. He does not have time to perform Wudu and Salah. May he make Tayammum?

A: He may not. He must make Wudu. If he is Junub he must make Ghusl. He must then pray Qada [compensate after valid time] after the

sun has arisen the height of a spear. Lack of time is not a valid excuse for Tayammum.

Question 50) Someone does not have water and is looking for water. Is it Wajib to delay his Salah until the end of that Salah's time [Waqt]?

A: It is not Wajib on him. It is Mustahab for him to delay it to the end of the Waqt. If he finds water he must make Wudu, or else he must make Tayammum and pray.

Question 51) A traveller forgot that he had water in his baggage. He had put it there himself or had ordered someone to put it there. He made Tayammum and prayed. He then remembers the water during the Waqt. Must he repeat the Salah?

A: He does not repeat according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله. Imaam Abu Yusuf رحمته الله said, "He repeats the Salah in this situation." May Allaah's mercy be on them all.

Question 52) Is it Wajib on a traveller who does not have water to search for water?

A: It is not Wajib unless his overwhelming thought is that there is water nearby. If he feels like that, he cannot make Tayammum until he searches for the water.

Question 53) If his travelling-companion has water, must he ask him before making Tayammum?

A: Yes, and if the companion sells it at a price people will pay or gives it for free then he must make Wudu. If he refuses him he must make Tayammum and pray.⁸

⁸ *Al-I'yanah* states: There are three scenarios. He either sells it at a price of a place where water is scarce, or at a low price or at an excessive price. In the first two scenarios Tayammum is not allowed. In the third situation it is allowed because of harm to him. There is a difference in the definition of excessive price. *An-Nawadir* says it is the doubling of the price whilst others say it is a price price-setters would not accept.

Question 54) What nullifies Tayammum?

A: Whatever nullifies Wudu nullifies Tayammum when the Tayammum is to substitute Wudu. The Tayammum of a Junub is nullified by what makes Ghusl Wajib. Also when one finds water or is now able to use it, both forms of Tayammum are nullified.

Question 55) Is there a replacement for washing the feet in Wudu?

A: Yes, many authentic Hadith prove that wiping the leather socks is a substitute for washing the feet.⁹

Question 56) Are there preconditions to wipe?

A: Yes, the Khuff must be worn when already in a state of Taharah.

Question 57) Is there a time limit to wiping?

A: When someone wears the Khuff in a state of purity, then becomes Muhdith, he may wipe on them from that point for a day and night if he is resident and three days and nights if he is travelling. Whenever he makes Wudu in the allowed period, he just has to wipe the Khuffs whether resident or travelling.

Question 58) Does the period of a day and night or three days and nights begin when wearing the Khuff or upon Hadath?

A: The period begins upon Hadath after wearing them in a state of Taharah, e.g. he made a complete Wudu at Zawal and wore the Khuffs while still pure. He then became Muhdith at travelling.

Question 59) Can one upon whom Ghusl is Fard wipe his Khuff?

A: He may not. It is Fard upon him to wash his feet like the rest of his body.

Question 60) Can a Khuff with holes be used?

⁹ Ibnul Munzir said: We narrated from al-Hasan, "Seventy Companions of the Nabi ﷺ narrate that Rasulullaah ﷺ wiped his leather socks." – *Nasbur Royah* (162/1)

A: If the holes are many, to the extent that thrice the size of the small toe is visible, the Khuff cannot be used for wiping on. It is allowed if the extent is less than that.

Question 61) Is this amount in one Khuff or both?

A: The holes of one Khuff are added, not both. If the holes of both combined equals the size of three toes, one may wipe over them. If that amount is in each or one of them, then it will not be allowed.

Question 62) What is the method of wiping the Khuff?

A: Use the fingers to wipe a line over the top. The fingers must first be moistened and then placed in its entirety.¹⁰ Wipe the fingers from the toes to the calf. At least three fingers must compulsorily be used on each Khuff.

Question 63) What will nullify this wiping?

A: Whatever nullifies Wudu will nullify the wiping; as will removing the Khuff and the expiry of the period.

Question 64) If the period has expired or one or both Khuff have been removed, but otherwise nothing has nullified the Wudu, what should he do?

A: He must wash both feet and may then pray. He need not repeat the rest of the Wudu.

Question 65) You said that a resident can wipe for a day and night and a traveller for three days and nights. What do you say about a traveller who comes home or a resident who then travels?

A: He who began wiping during travel and reaches home after having wiped for a day and night or more, must remove the Khuff. If less than that he may complete the period of a day and night. He who begins wiping at home and then travels, before completion of the period of a day and night then he can make 'masah' for a complete 3 days and 3 nights.

¹⁰ Meaning that the fingertips will not suffice. The whole finger must be used.

Question 66) Can one wipe on a sock worn over the Khuff?

A: Yes, he may if he wore it before Hadath.

Question 67) What is the ruling of wiping on socks?

A: It is not allowed unless it is Mujallad¹¹ or Muna'al as per Imaam Abu Hanifa رحمته الله. Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله say that it is permissible if they are thick, not thin. May Allaah's mercy be upon them all.

Question 68) Is there wiping on something besides the Khuff?

A: A bandage can be wiped if the wound is severe; or on an organ that is broken and must be healed; or a bandage on a broken limb like an arm or leg.

Question 69) Is it a condition for wiping on the bandage that it be put on while in state of Taharah?

A: No, it is not. If one ties it without Wudu and then wants to make Wudu he may do so.

Question 70) If he loosens and takes off the bandage after the wound has healed, is the wiping on it still valid?

A: In this scenario the wiping is nullified. If he was in the state of Wudu and then removed the bandage and nothing else nullifies the Wudu then he need only wash the organ which the bandage has covered and may then pray.

Question 71) Is wiping on the turban, headgear, Burqa ' or gloves allowed?

A: No.

¹¹ Muajallid: has leather on the top and bottom. Muna'al: has leather at the bottom like a sandal for the foot.

Hayd, Nifas and Istihadah [menstruation, childbirth and bleeding due to illness]

Question 72) What is Hayd [Menstruation]?

A: Allaah has decreed that blood flows from the wombs of the daughters of Banu Adam. Most women have this blood flow every month. This flow is called menstruation. Its opposite is Tuhr.

Question 73) Are there laws in Shari'ah pertaining to these two states?

A: Yes, there are laws mentioned in the Fiqh books.

Question 74) What laws are applicable to a menstruating woman?

A: There are five laws applicable to her:

1. She may neither perform Salah nor fast during the days of her menses, neither Fard nor Nafl.
2. She may neither enter a Masjid nor make Tawaf.
3. She may not read the Quran.
4. She may not touch the Mus-haf of the Quran except with a detachable barrier.
5. Her husband may not have intercourse with her.

Question 75) When she becomes purified, does she have to compensate any Salah or fast?

A: She does not have to compensate for any Salah. That has been removed from her responsibility, except that which had to be compensated anyway from before. As for the fasts of Ramadan, that has to be kept when she becomes purified.

Question 76) Are there minimum and maximum periods for the menses?

A: Yes, the minimum menstruation is three days and nights and the maximum is ten days and nights.

Question 77) Is there a specific colour to the menses blood?

A: Whatever she sees of red, yellow, brown during the days of menses is menstrual blood, until she sees only white.

Question 78) When the menstrual blood ends and she sees only white, when may she have sex?

A: If the menses ended before ten days, she may not have intercourse until she has a Ghushl¹² or the Waqt of a complete Salah passes.¹³ If it ends after ten days have ended, she may have intercourse without Ghushl.

Question 79) If there is a period of purity between two bleedings, does that fall under the rule of menses or purity?

A: The "purity" which might occur during the menstrual period is still menses. All laws of menstruation still apply.

Question 80) Are there minimum and maximum periods of purity?

A: The minimum period of purity is 15 days. This means that if there is bleeding after ten days, and before 15 days, it will not be considered menses because the minimum period of purity has not passed. There is no maximum period of purity. If she does not menstruate for years, she will still be pure until she bleeds.

Question 81) What is Nifas?

A: It is the bleeding from a woman's womb after childbirth.

Question 82) What is its period?

A: Maximum is 40 days. There is no minimum.

Question 83) What law applies to Nifas?

¹² This is when it ended in less than ten days and is her normal cycle. If however it is less than her normal cycle she may not have intercourse even if she makes Ghushl, until her normal period is completed. It is most probable that her normal period will recommence and hence it is safer to avoid sex. *Al-Hidayah* states so.

¹³ "Complete Salah" is to exclude Salah like *ad-Duha* and 'Id. If it happens in such times, then she must wait until the time of *azh-Zhuhr* passes.

A: The same rules as menses. She may not make Salah, fast, sex, enter the Masjid, make Tawaf, read the Quran, touch the Mus-haf except with a detachable cover. She must compensate for missed fasts of Ramadan but not Salah as we mentioned under the laws of menses.

Question 84) When twins have been born from the same womb, from which does the period of Nifas begin?

A: It begins with the first according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله. Imaam Muhammed رحمته الله and Imaam Zafar رحمته الله says that it begins with the second. May Allaah's mercy be upon them both.

Question 85) If a woman has a Caesarean Section, do the laws of Nifas apply?

A: The laws of Nifas will apply if blood flowed from her womb via the normal passage. If no blood flows from the womb it will be regarded as a wound with all the normal applicable laws of wounds. [see *al-Bahr ar-Raiq*: 229/1]

Question 86) Do the laws of Nifas apply when she gave birth the normal way but no blood flowed from the womb?

A: Yes, she must take a Ghushl and pray and fast without delay. [see *al-Bahr ar-Raiq*: 229/1]

Question 87) Is a woman in a state of Nifas when she has a miscarriage?

A: If some part of the foetus was completely created and is seen, such as a hand, leg, nail, hair or finger, then she is in Nifas. If no organ can be seen then it is treated as blood flowing from the womb. If it lasts three days and nights preceded by a purity period, then that is menses, otherwise Istihadah. [see *ad-Durr al-Mukhtar*]

Question 88) What is the ruling of a period of purity during Nifas?

A: The purity between two bleedings within a 40 day period is still Nifas.

Question 89) What is Istihadah?

A: It occurs in several forms:

1. If she bleeds and it stops before three days it is Istihadah.
2. What goes over her normal period or over ten days is Istihadah.
3. If she bleeds for the first time and it goes over 10 days, then the ten days are menses and the rest Istihadah. If this bleeding of a beginner goes on for years, then her menses is ten days of every month, the rest Istihadah.
4. The bleeding of a pregnant woman is Istihadah.
5. The bleeding of a pregnant woman before giving birth is Istihadah.
6. If a woman in Nifas has a set known period, and her Nifas bleeding exceeds 40 days, then what exceeds her period is Istihadah.
7. If however, a woman gave birth for the first time and she bleeds for more than 40 days, then the 40 days is Nifas and the rest Istihadah.
8. If she has a miscarriage and no organ of the foetus is completed and this period cannot be her menses, then it is Istihadah.

Question 90) What are the laws of Istihadah?

A: She is the same as a pure woman regarding reading the Quran, entering the Masjid, fasting Fard and Nafl and relations with the husband. If however, there is no time except that the blood is flowing then she is Ma'zur [excused]. She must make Wudu for every Waqt of Salah. With that Wudu she may perform any amount of Fard and Nafl she wishes. The Wudu ends with the end of that Waqt. When she has made wudu she may pray, make Tawaf and touch the Mus-haf.

Laws of Ma'zur [excused]

Question 91) What should someone with continuous nosebleed, or a wound which does not stop flowing, or continuous urine or passing of wind do?

A: They have to make a fresh Wudu for the Waqt of each Salah. With that wudu they may perform any amount of Fard and Nafl they wish. Their continuous ailment does not nullify the Wudu. The Wudu is nullified by the end of the Waqt.

Question 92) If some other nullification arises besides their continuous ailment, is the Wudu nullified?

A: Yes, e.g. he suffers from continuous wind and then urinates, so the Wudu is nullified with the urine and does not continue until the end of the Waqt.

Impurities and their purification

Question 93) What are impurities and what kinds are there?

A: There are two kinds: Ghalizhah and Khaififah [severe and light].

Ghalizhah includes whatever the human body emits which necessitates Wudu or Ghusl, such as excreta, urine, semen, wadi, bile, bile with blood, vomit when it is a mouth-full; blood of menses, Nifas and Istihadah; urine of a baby boy or girl whether they ate food or not; wine; flowing blood; and the flesh, fat and skin of carrion.

Also, the urine of that whose flesh may not be eaten; excreta of a cow, dog, chicken, duck, goose, hunting animals – all these are Najasah Ghalizhah, as are all parts of the pig.

Khafifah includes the urine of an animal which can be eaten, horse urine and excreta of a bird which cannot be eaten.¹⁴

Question 94) When does the difference between severe and light impurity arise?

A: It arises when soiled by them. If someone's body or clothes was soiled with Ghalizhah to the amount of a dirham or less, then the Salah is allowed but Makruh. If soiled with Khafifah then Salah is allowed as long as the dirt does not reach a quarter of the clothing. If the Ghalizhah is over a dirham or the Khafifah reaches the amount of a quarter of the clothing, then Salah would not be allowed.

Question 95) If the body or clothing is soiled, what is the method of purification?

A: If the dirt is visible, then the body or clothing must be washed until the body of the dirt is removed. Pure water of liquid such as

¹⁴ The specification is made because the excreta of birds which can be eaten such as doves and swallows are pure according to Imaam Abu Hanifa رحمته الله.

vinegar or rose water must be used. If it cannot be seen, such as urine or filthy water, then it must be washed until the person's overwhelming feeling is that it has been purified.

Question 96) What is the ruling when visible dirt has been removed but its trace remains?

A: When the body has been removed, then the traces which are difficult to remove such as smell and colour do not matter.

Question 97) Are there other methods to purify?

A: Yes, the Fuqaha have expounded many, some of which we mention here:

1. If one tramps with one's leather socks on dirt which has a body one may scrape it on the earth when it dries. If the dirt has been removed one may pray in it.
2. If sperm soiled the clothing, it cannot be cleaned except with washing. If it has dried, one may scrape it off on condition that it was not mixed with urine.¹⁵
3. It is enough to wipe clean a mirror or sword which has been soiled with Najasah.
4. If there was any Najasah on the earth and it dried and its traces removed, one may pray on that place. Tayammum may not be made with that earth. If the earth was washed and the traces of dirt removed, then both (matters) are allowed.
5. When a hide of carrion has been tanned, it is purified and Salah on it is allowed. Wudu from a vessel made from it is allowed. The hide of a pig can never be purified. The skin of a human may not be used out of respect.

Istinja [cleaning after going to toilet]

Question 98) What is the ruling of Istinja?

A: It is Sunnah fulfilled by wiping the place with a stone, mud or other substitute until the place is clean. To do so in odd numbers is

¹⁵ If the head of his penis was covered with Najis such as urine, scraping will not clean it. *Al-Fatawa al-Hindiyah* 44/1

better, not Wajib. Washing with water is better. If the Najasah extends beyond the place of emission, then stone and the like will not suffice. To use water or liquid will be Wajib.

Question 99) What cannot be used for Istinja?

A: Do not make Istinja with the right hand. Do not use bones, excreta, food or anything which should be respected.

Question 100) What do you say about facing the Qiblah or turning one's back to it when urinating or defecating in a building or in the open?

A: It is Makruh to face or turn one's back to Qiblah when urinating or defecating whether in a building or in the open.

Question 101) Where is it forbidden to urinate or defecate?

A: It is forbidden to urinate or defecate in water, places of water, beneath fruit-trees, in a shade people use, in the path of people, in blowing wind, on rocks and to urinate standing.

Kitabus Salah – The Book of Prayer

Question 102) What is the ruling of Salah in Islaam?

A: Salah is the greatest basic principle of Islaam after La ilaha illallaah Muhammedur Rasulullaah. It is a pillar of Islaam which in the Quran Allaah has repeatedly commanded to be upheld. It is Fard upon every man and women who has attained maturity and is sane. He who denies it being Fard is outside the pale of Islaam.

Question 103) When should children be ordered to make Salah?

A: The Nabi (SAW) has said, "Order you children to make Salah when they are seven years old. Hit them when they reach ten and separate them in their beds." ¹⁶ Another narration states, "Teach the child of seven and hit them about it when they are ten." ¹⁷

¹⁶ *Sunan Abi Dawud*: Chapter when a child must be ordered for Salah.

¹⁷ *Jami 'at-Tirmizi* : Chapter when a child must be ordered for Salah.

It is Wajib on the parent to pay attention in ordering the child for Salah. Allaah says, "And I have chosen you so listen carefully to what is being revealed." [Taha: 132]

Times of Salah, the beginning, end and recommended times

Question 104) How many times is Salah Fard in a day and night?

A: It is Fard five times in a day and night, at five specified times. Each time [Waqt] has a beginning and end.

Question 105) Explain the beginning and end of these times.

A: The first is Salatuzh Zhuhr. Its beginning is after Zawal of the sun [after it descends from its high point]. Its end is when the shadow of each thing is double its height plus the "fay"¹⁸ of Zawal according to Imaam Abu Hanifa رحمته الله, Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله say that the time is from after Zawal until when the shadow of each thing equals its height plus the "fay" of Zawal. The Second is al-'Asr. It begins when azh-Zhuhr ends as per the above different opinions. It ends when the sun rises. The Third is al-Maghrib. It begins when the sun has set and lasts as long as the Shafaq has not disappeared. The Fourth is al-'Isha. It begins when Shafaq disappears. It lasts as long as the second [true] dawn has not arisen. The Fifth is al-Fajr. It begins when at second dawn and ends at sunrise.

Question 106) What is Shafaq?

A: If you look to the west after sunset you will find a reddishness in the horizon which lasts 40 minutes and more. The reddishness gradually disappears and is replaced with a whiteness in the horizon. Both the redness and whiteness are called Shafaq. Imaam Abu Hanifa

¹⁸ Fay is the shadow when the sun reaches its high point at midday. *Ad-Durr al-Mukhtar* states: Fay of Zawal is just before Zawal. It changes with different times and places.

'Umdah ar-Ri'ayah states: Associating Fay with Zawal is for the nearest association.

رحمته الله said that Shafaq applies to the white. When the white disappears Maghrib ends and 'Isha begins.¹⁹ Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله said that the red is the Shafaq. When the red disappears Maghrib ends and 'Isha begins.

Question 107) What is second dawn?

A: When night is nearly over you will find a vertical line like a pillar in the eastern horizon. That is the first or false or vertical dawn. Thereafter darkness covers the horizon. After the darkness a horizontal line of light arises in the eastern horizon and gradually increases. The horizontal light is the second or true dawn. It is also called the enlightening dawn and the horizontal dawn.

Question 108) What are the number of Rak'at in each Fard Salah?

A: The Fard Ra k'at for azh-Zhuhr, al-'Asr and al-'Isha are four. In al-Maghrib there are three and in al-Fajr there are two.

Question 109) Are there any additional Rak'at with those?

A: Yes, they are other in Shari'ah, but they are not Fard. Amongst these are Witr which is Wajib. Then there are Sunan [Sunnahs] whose virtues are mentioned in a Hadith. We shall discuss them InshaAllaah.

Question 110) What is the Waqt of Salah al-Witr?

A: The Waqt of Witr is exactly that of 'Isha, except that it cannot be performed before the Fard of 'Isha, because that sequence is Wajib. The final time for Witr is as long as second dawn has not risen.

¹⁹ Imaam Abu Hanifa رحمته الله has preferred that Shafaq refers to the white. This is according to Abu Bakr, 'Umar, Mu'az, and 'Aishah رضي الله عنها. This is mentioned in *al-Bahr ar-Raiq*. (258/1). Ibn 'Abidin says in *al-Hashiyah 'ala al-Bahr ar-Raiq* called *Minhatul Khaliq* quoting from *al-Ikhtiyar*: 'Abdur Razaq narrates this from Abu Hurayrah and 'Umar bin 'Abdil 'Aziz and al-Bayhaqi has not narrated the red Shafaq except from Ibn 'Umar رضي الله عنهما. In *Sulih Ibn Khuzaymah*: When the red disappears and the white still remains, the time of al-'Isha is doubtful and not certain, because the 'Ulama have differed about the Shafaq. Some say it is the red, others the white. It is not established with knowledge from the Nabi ﷺ that it is the red. (184/1).

Question 111) Are there within the times any preferred times?

A: Yes, there are preferred times:

1. Isfar [yellowing of the sky] is preferred for Fajr. Begin the Salah at that time and recite the Sunnah Qira'ah in such a way that upon completion, if any nullification of the Salah is discovered, it can be repeated inclusive of the Wudu with Masnun Qira'ah. It should not be delayed so much that there is doubt if the sun might have risen. [See *al-Bahr ar-Raiq* (260/1)]
2. It is Mustahab to delay azh-Zhuhr in summer and to perform it early in winter.
3. It is Mustahab to delay al-'Asr both in summer and winter as long as the sun has not changed i.e. it has not become so weak that there is no difficulty to directly stare at it.
4. It is Mustahab to perform al-Maghrib early both in winter and in summer.
5. It is Mustahab to delay al-'Isha when a third of the night has passed. These are the general rules, it is however preferred to hasten with al-'Asr and al-'Isha when the day is cloudy and to delay the others.
6. He who loves Tahajjud should delay Witr to the end of the night if he is certain that he will awake. He who is uncertain and fears that he might not awake should perform Witr before he sleeps.

Makruh Times

Question 112) Are there times in the day and night when Salah is forbidden?

A: Yes, there are three times when Salah is forbidden:

1. Sunrise
2. Sunset
3. At midday when the sun is at the peak.

Salah may not be performed at these times, neither Fard, nor Sunnah nor Nafil. Also, Salat al-Janazah [Funeral] and Sajdah of Tilawah may not be made.

Question 113) Are there any exceptions to that rule?

A: Yes, a Salah may be performed at sunset although it is Makruh. It is for a person who has not prayed al-'Asr of that day. He cannot leave out the Salah just because it is Makruh. He should ask Allaah for forgiveness for his delay. No other Salah may be performed at that time.

Question 114) Are there any other times when Salah is disliked?

A: Yes, there are two times when Nafil is Makruh:

1. After Salat al-Fajr until the sun has risen to the height of a spear.
2. After Salat al-'Asr until the sun has set.

Question 115) If one has made Tawaf after Fajr or 'Asr may one pray the two Rak'at of Tawaf?

A: The Salah of Tawaf may also not be performed in these two times. He should wait until the sun has adequately risen or set as per the time.²⁰

Question 116) Can someone pray his missed Salah after Fajr or 'Asr?

A: Yes, except that he must complete the Salah he makes after 'Asr before the sun turns yellow.

Question 117) Can he pray Janazah or Sajdah at-Tilawah in these two times?

A: Yes, it is permissible.

²⁰ Al-Bukhari made a chapter in his *as-Sahih* called, "At-Tawaf after Fajr and Asr" He mentioned that 'Umar رضي الله عنه made Tawaf after Fajr and then rode off and made the two Rak'at at Zu Tuwa. Al-Imam Malik also mentions it in his *al-Mu-atta*. Al-Imam at-Tahawi mentions it with his own chain in *Sharh Ma'ani al-Athar*. He then says, "'Umar رضي الله عنه did not immediately make two Rak'at because it was not a time of Salah. He waited until the time of Salah arrived and then prayed the two Rak'at. This was in the presence of the rest of the Sahabah of Rasulullaah ﷺ and none of them objected against him. If he could have made the two Rak'at at that time he would have. Why else would he have delayed it, when it is inappropriate for some who has made Tawaf to delay the two Rak'at, except with an excuse."

Question 118) What do you say about Nafil after dawn and before Salatul Fajr?

A: Beyond the two Sunnah Rak'at any Nafil before Fajr is Makruh.
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Question 119) What do you say about Nafil after sunset and before Salatul Maghrib?

A: One should not make Nafil after sunset, but should hasten to perform al-Maghrib.²²

²¹ Nafil means extra and is applied here to anything besides Fard because it is extra to Fard, hence it encompasses Sunnah Muakkadah [emphasised] and others.

²² The Nabi ﷺ said thrice, "Pray before Salatul Maghrib." At the third time he added, "whoever wants to." He disliked that the people should regard it as Sunnah. Narrated by al-Bukhari in his Kitabut Tahajjud under the Chapter of Salah before Maghrib. The Hadith is clear that there is a Shar'i basis for Nafil before Maghrib but that it is not Sunnah Muakkadah. Ibn Qudamah said in *al-Mughni* (766/1), "The apparent opinion of Ahmad is that the two Rak'at are allowed but not Sunnah."

We see the people in two groups on this issue. One group prays it and does not leave it ever. Others never pray it and regard it as insignificant. This is extremism and overstepping the bounds. The first group's actions shows that they are amking it Muakkadah which is never left out. This contradicts Rasulullaah's ﷺ words, "...whoever wants to." He said it that it not be construed as Sunnah. They other group make as if Nafil before Maghrib is absolutely forbidden in the severst terms. They will never pray it, no matter how much time is available when waiting for the Imam. This is especially true in the Haramayn where the Imams come to the Musallis some time after the Azan, so that if anyone wishes to pray in that time he may do so. What harm is there to pray the two Rak'at in that free time sometimes and leave it out the next time? What is mentioned in some Hanafi books about it being Makruh to pray Nafil before Maghrib refers to lengthening it and stretching the the time between Azan and Iqamah. If it is a short time and one prays two short Rak'at then it is not Makruh. Ash-Shami said in *Raddul Muhtar* (252/1), and he noted in *al-Fath* and affirmed in *Halabah al-Mujalla* the commentary of *Munyatul Musalli* and *al-Bahr*, "When time is allowed for the two Rak'at (and) it is a short time, so to pray it is allowed."

Azan and Iqamah

Question 120) What is the ruling of Azan in Shari'ah?

A: Azan is Sunnah Muakkadah for the five Salah and Jumu'ah and for no other Salah. It has no Shar'i basis for the two 'Id, Sunan, Nafil, Istisqa [Drought Prayer] or Eclipse Prayer.

Question 121) What are the words of Azan?

A: اشهدان لا اله الا الله [Allaah is the greatest]. الله اكبر الله اكبر الله اكبر الله اكبر
اشهد ان محمداً رسول الله [I testify that there is no Illah but Allaah]. اشهدان لا اله الا الله
حي على [I testify that Muhammed is the Rasul of Allaah] اشهدان محمداً رسول الله
[Come to Prayer] حي على الفلاح , حي على الفلاح [Come to success] الله اكبر الله اكبر
[There is no Illah but Allaah] لا اله الا الله [Allaah is the greatest] الله اكبر الله اكبر
[Allaah].

Question 122) Are any other words added at times?

A: Yes, in the Azan of Fajr, الصلاة خير من النوم [Prayer is better than sleep] is added after حي على الفلاح

I say that there is a clarification of this in *Sahih al-Bukhari* in the Book of Azan in the Chapter: How much time between Azan and Iqamah. 'Uthman bin Jabalah and Abu Dawud narrate from Shu'bah that there was very little time between the two.

So much delay and lengthening of the two Rak'at whereby the hastening of Maghrib is not achieved is Makruh. How can it not be so when al-Bukhari has (narrated) from Rafi' bin Khudayj, "We would make Maghrib with the Nabi ﷺ. When one of us left we could still clearly see the place of his arrow."

Question 123) Is there Tarji' in Azan?

A: There is no Tarji' according to the Ahnaf.²³

Question 124) Explain the words and time of the Iqamah.

A: When the people stand for Jama'ah [congregational] Salah, the Muazzin will repeat the words of the Azan. After *حتى على الفلاح* he will add *قد قامت الصلاة* [Salah is established] twice. The people present in the Masjid should be able to hear him. This is the Iqamah.

Question 125) Is there a difference in the way the Azan and Iqamah are rendered?

A: Yes, the Azan is lengthened out and the Iqamah is recited hastily.

Question 126) What is the ruling on facing the Qiblah during the two?

A: It is established from the Nabi ﷺ until our present day to face the Qiblah while calling Azan and Iqamah.

Question 127) Should the face be turned when reciting any words?

A: It is Mustahab for the Muazzin to turn to the right when saying *Hayya 'alas Salah* and to the left when saying *Hayya 'alal falah*.

Question 128) What is the ruling of putting the fingers in the ears during the two calls?

A: It is Sunnah during Azan only. The Nabi ﷺ ordered Bilal رضي الله عنه to do so. He said, "It will raise your voice." [narrated by Ibn Majah].

Question 129) What is the ruling of Azan and Iqamah for missed Salah?

A: Both should be called. If he wishes to perform several missed Salah at the same time, both should be recited for the first. Thereafter he may recite both for each Salah or suffice with the Iqamah.

²³ Tarji' is to silently say the two Shahadah and then repeat it loudly. It is Sunnah according to the Shafari'

Question 130) Can Azan and Iqamah be called without Wudu?

A: It is only appropriate that the Muazzin has Wudu. It is permissible to call the Azan without Wudu but Makruh to call Iqamah like that. It is also Makruh for a junub to call the Azan.

Question 131) What is the ruling of a junub having called the Azan and Iqamah?

A: The Azan should be repeated, not the Iqamah.²⁴

Question 132) Is the Azan of a child allowed?

A: Yes, if the child is intelligent ['aqil] and can distinguish [Mumayyiz]. His Azan need not be repeated.

Question 133) What is the ruling of Azan before the Waqt?

A: It is not valid and must be repeated. Imaam Abu Yusuf رحمته الله however has permitted the Azan of Fajr before its time.

Shurut [preconditions] of Salah

Question 134) Describe the preconditions of Salah by which Salah is not valid.

A: The following is necessary upon the Musalli

1. Pure from both Hadath from the beginning of the Salah until the end.
2. His body must be pure from Najasah
3. That the place of Salah be pure
4. That he wear pure clothing which cover the 'awrah [private region]. The Salah with clothing which reveals the 'awrah is invalid as is Salah with clothing soiled with Najasah
5. The Salah should be in its Waqt. It may not be before the entry of its time.

²⁴ This is the more authentic view as stated in *al-Mustadrak* and *al-Majma'ah*. Repeating the Azan has a Shari' basis as in the Azan of Junub, as opposed to the Iqamah from that it is understood that Iqamah is not repeated because of the Mu'adhah. *Al-Bahr ar-Rayq* [3/211]

6. He must face the Qiblah.

7. He should have an intention in his heart which Salah he is performing. There should be no blockage (gap) between the intention and the Tahrimah. The Muqtadi [follower] should in addition intend that he is following the Imam.

Question 135) What should someone who neither has pure clothing nor has the means of removing the Najasah do?

A: He should perform the Salah in that Najis clothing. The Salah will be valid and need not be repeated.²⁵

Question 136) How should one pray who does not have clothing to cover his 'Awrah?

A: If he prays and stands and makes Ruku' and Sujud it will be correct. It will be better if he sits and does Ruku' and Sujud by way of indication only. In either case he should hide from the people.²⁶

Question 137) What are the limits of a man's 'Awrah which must be covered for the Salah to be valid?

A: A man's 'Awrah is from below the navel to the knee. The knee is included but not the navel.

Question 138) What is a woman's 'awrah?

A: If she is a free woman then her 'awrah for the validity of Salah is her entire body. The only exception is her face, hands and feet. This

²⁵ That is the concise words of al-Quduri. Al-Hidayah expands on it thus, "There are two scenarios. If a quarter or more of the clothing is pure then he should pray in it. If he prays naked it will not be valid. A quarter of a thing can represent a full. If it is less than a quarter is pure then the ruling remains the same according to Muhammed and one of two views of ash-Shafi'i. They say that Salaj in the dirty clothing is leaving one Fard, but Salah naked is leaving several. According to Imaam Abu Hanifa رحمته الله and Abu Yusuf he has a choice between the two, but praying in the clothing is better because covering the private region is not specified to Salah, whereas purity is.

²⁶ There are four scenarios: 1. Salah sitting with indications; 2. or with full Ruku' and Sujud 3. standing with indications; 4. or with full Ruku' and Sujud. According to ad-Durr al-Mukhtar all four are permissible but the first is best. See its chapter on preconditions of Salah.

is only for the validity of Salah. It does not mean that she is allowed to show her face to non-Mahrams.²⁷ A slave-girl's 'awrah is the same as a man's, except that she will cover her stomach and back. The rest of her body is not 'awrah.

Question 139) What should one do who is unable to face Qiblah due to fear of animals or some other reason?

A: He should face whichever direction he is able to.

Question 140) If one is confused about the Qiblah and there is none to ask about it, what is the ruling?

A: He should make an effort to ascertain and then face wherever he thinks the Qiblah most probably is.

Question 141) If after the effort he prayed and then learnt that his Qiblah was wrong, should he repeat the Salah?

A: No.

Question 142) What should he do if he learns whilst already in Salah that his Qiblah is wrong?

A: He should turn to the Qiblah and continue his Salah. He need not start anew.

NOTE: When one is in al-Masjid al-Haram, it is necessary that one faces the Ka'bah exactly. As for one outside, even in Makkah, it is sufficient to face the direction of the Ka'bah.

Faraid of Salah

Question 143) List the Fard acts of Salah.

A: There are six Faraid:

1. at-Tahrimah [the first Allaahu Akbar]
2. Qiyam [standing]
3. Qira'ah [recitation of the Quran] even if it be an Aayah.

²⁷ Ad-Durr al-Mukhtar warns about this saying, "A young woman is forbidden from showing her face to men, not because it is 'awrah, but because of fear of temptation, just as even if there is no desire, touching is worse."

4. Ruku'
5. Sujud
6. The final sitting for the duration of Tashshahud.

Question 144) What is the ruling of the Faraid?

A: It is necessary to do them. The Salah is not valid if even one is omitted, whether intentionally or forgetfully. The Salah must be repeated and Sujodus Sahw will not suffice.

Wajibat of Salah

Question 145) What are the Wajibat of Salah?

- A:** There are as follows:
1. Recitation of Surah al-Fatihah.
 2. To join a Surah or three Aayat with it.
 3. To read al-Fatihah before the Surah.
 4. To recite in the first two Rak'at of the Faraid.
 5. Coming to a standstill in each posture [Itminan].
 6. The first sitting.
 7. Tashshahud in the first and second sitting.
 8. The word, "Salam," when intending to end the Salah.
 9. Qunut in Witr.
 10. The extra Takbirs of 'Id.
 11. For the Imam to read Qira-ah aloud in Fajr, Jumu'ah, the two 'Ids, Tarawih, Witr of Ramadan and the first two Rak'at of Maghrib and 'Isha.
 12. For the Imam to read Qira-ah softly in Zhuhr and 'Asr and after the first two Rak'at of Maghrib and 'Isha.

Question 146) What is the ruling of Wajib?

A: If a Wajib is omitted deliberately, it is Wajib to repeat the Salah. If it was forgotten then Sujodus Sahw suffices.

Sunan of Salah

Question 147) What are the Sunan of Salah?

A: They are as follows:

1. Lifting the hands at the time of Tahrimah in line with the ears if a man and with the shoulders for a woman. Men will then place their right hands on their left below the navel.
2. Thana after Tahrimah.
3. Ta 'awwuz [A'uzu billah minash Shaytanir Rajim]
4. Tasmiyah
5. To say, "Amin" after al-Fatihah.
6. Tasbih.
7. Tahmid.
8. Takbir of Ruku', Sujud, Qiyam [standing] and when rising from Ruku'.
9. Tasbih of Ruku' and Sujud.
10. Holding the knees with the hands during Ruku' with the fingers spread out.
11. During the two sittings and between the two Sajdah to sit on the left foot flat under the buttocks with the right foot raised at the side.
12. To point the finger at Tashshahud.
13. Placing the hands on the thighs during the sittings.
14. Qira-ah after the first Rak'at in the Faraid. In non-Faraid Qira-ah is necessary in each Rak'ah. The Imam's Takbir, "Sami'Allaahu liman hamidah," and Salam.
15. Salat 'alan Nabi ﷺ in the final Tashshahud.
16. Du'a after that which resemble those of the Quran and Hadith.
17. To turn right and left during the two Salam.
18. For the Imam to intend greeting the men, guardian angels and pious Jinn when making both Salam.
19. The follower should intend greeting the Imam when turning in the direction the Imam is. If he is directly in line, he should intend both times.
20. The follower should intend greeting the other followers, guardian angels and pious Jinn in both directions.
21. One praying alone should intend the angels only.

Etiquettes of Salah

Question 148) What are the etiquettes of Salah?

A: They are as follows:

1. A man should remove his hands from his sleeves at the time of Takbir.
2. To look at the place of Sujud when standing, at the top of the feet when in Ruku', at the nose when in Sujud, at the lap when sitting and at the shoulders when making Salam.
3. Avoid coughing as far as possible.
4. Closing the mouth when yawning.

Method of Salah from Tahrimah to Salam

Question 149) Explain the method of Salah from beginning to end.

A: When intending to start Salah, recite Takbir to begin without vowel elongation, whilst standing and raise the hands until the ears. After Takbir place the right hand over the left below the navel. Then recite Thana, سبحانك اللهم وبحمدك وتبارك اسمك وتعالى جدك ولا إله غيرك "Pure is You O Allaah with Your praises. Blessed is Your Name and high is Your station. There is no illah but You." Then recite Ta'awwuz and then Tasmiyah. These three are silent. A follower does not recite the last two because there is no Qira-ah for him. Thereafter al-Fatihah is recited. Then Amin is said softly even when it is a loud Salah. Thereafter a Surah or any three Aayat are read. After Qira-ah read Takbir and go into Ruku' without raising the hands. Then grip the knees with the hands. The fingers should be spread out and the calves straight. The back must be stretched out straight in line with the buttocks. The head should neither be raised nor dropped. In Ruku' he will say at least thrice, سبحان ربّي العظيم "Pure is my Rabb Most Magnificent." He will then raise his head from Ruku', saying, "Allaah has heard he who has praised Him." He will then say immediately, سمع الله لمن حمده "Praise be to You my Rabb," if he is praying alone. In congregation the Imam will suffice with the first sentence and the follower with the second. He will stand up straight. He will then say Takbir ربنا لك الحمد and go into Sujud by first lowering his knees, then his arms then his hands. He will stretch his fingers to the Qiblah, making Sujud with his nose and forehead, his

armpits open. His stomach must be away from his thighs. His toes should face the Qiblah. Recite at least thrice, سبحان ربّي الأعلى "Pure is my Rabb Most High." Then raise the head, reciting Takbir. Sit up straight, coming to a standstill, hands on the thighs. Recite Takbir and go into Sajdah, reciting the same at least thrice. Then say Takbir to stand again without leaning on the hands or sitting in between. First the head should be raised, then the hands, then the knees and stand for the second Rak'ah. There will be no Thana or Ta'awwuz this time. When the second Sajdah of the second Rak'ah is completed, place the left foot flat under the buttocks and raise the right foot, toes facing the Qiblah. Place the right hand on the right thigh and the left on the left. Fingers are spread out on them. Recite the tashshahud of Ibn Mas'ud رَضِيَ اللَّهُ عَنْهُ،

الْحَيَاتُ اللَّهُ وَالصَّلَاةُ وَالطَّيِّبَاتُ السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ عَلَيْهَا

وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ

"Greetings, salutations and purity be to Allaah. Salam to you O Nabi and Allaah's mercy and blessings. Salam be on us and Allaah's pious slaves. I testify that there is no illah but Allaah and I testify that Muhammed is His slave and Rasul (messenger)."

He will indicate with his right index finger at the time of the Shahadah, making a circle with the thumb and middle finger and closing the small and next finger. If he intended two Rak'at, Salah 'alan Nabi ﷺ is recited after Tashshahud. Du'a from Quran and Hadith is then recited, but not what resembles the words of people. Salam is then made to the right saying, "As-salamu 'alaykum wa rahmatullah." The same is done to the left. He should turn so much that someone looking behind at his shoulders will see his cheeks. He will intend that he is greeting the Imam, the guardian angels and the fellow Musallis as we have mentioned before.

If he intended four Rak'at at the time of Tahrimah he will stand up from Tashshahud for the third Rak'ah. He will not raise his hands, nor recite Ta'awwuz and Thana. After the two Sajdah he will stand for the fourth Rak'ah. The third and the fourth is completed with standing, Qira-ah, Ruku' and Sujud as we discussed with the first two. He will sit after the second Sajdah of the fourth Rak'ah just as he sat for the first

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two Rak'at. He will recite the Tashshahud and Salat 'alan Nabi ﷺ, offer du'a and make Salam to the right and left as discussed.

If he intended three Rak'at at the time of Tahrimah, he will sit after the second Sajdah of the third Rak'ah. He will recite the Tashshahud and Salat 'alan Nabi ﷺ, offer du'a and make Salam.

Question 150) What is the ruling of Sajdah on the tail of the turban or the extra part of the clothing?

A: If it is on the forehead and he makes Sajdah it is valid but Makruh. If done with an excuse then it is not Makruh.²⁸

Differences between a man's and woman's Salah

Question 151) Is the description you have given the Salah of a man only, or a man and woman?

A: It is for both. A woman however differs with a man as follows:

1. She will place her hands on her chest.
2. She will not take her hands out of her sleeves at the time of Takbir.
3. She will raise her hands to the height of her shoulders.
4. She will not spread out her fingers during Ruku'. She will keep them closed and place them on her knees.
5. She will lower herself slightly for Ruku' to the extent that she almost reaches the full extent but she will proceed beyond that.
6. She will keep her elbows in during Ruku'.
7. She will keep her stomach close to her thighs during Sajdah.
8. She will sit in the Twarruk position in every sitting. i.e. She will extend her legs to the right side. Right calf on the left calf. [Buttock] sitting on the ground.

²⁸ *Ad-Darr al-Mukhtar* states, "It is Makruh Tanzihi to make Sajdah on the turban tail except for a reason although it remains valid as long as it is completely or partly on the forehead as has been discussed. If it is only on his head and he makes Sajdah like that deficiently then it is invalid because Sujud was not made on its place. It is also a condition that the place of Sajdah be clean and that the bulk of forehead touches the ground. People are neglectful of that." [Description of Salah]

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9. She will place her arms on the ground during Sajdah.

Qira-ah

Question 152) Explain the laws of Qira-ah for the Imam, Muqtadi [follower] and Mufrid [solitary Musalli].

A: The Masail are as follows:

1. Qira-ah in general is Fard in every Salah.
2. Qira-ah of al-Fatihah is Wajib.
3. To read a Surah or three Aayat thereafter is also Wajib. Qira-ah in itself by fulfilling one of these two is Wajib.
4. The third and fourth Rak'at of Fard Salah is exempted from the above rule. Here al-Fatihah is Sunnah, not Fard or Wajib.
5. It is Wajib to specify Qira-ah in the first two Rak'at of Fard [i.e. it cannot be substituted into other Rak'at]
6. It is Wajib to read al-Fatihah before the rest of the Qira-ah.
7. One has a choice if one wishes to read al-Fatihah after the first two Rak'at of the Fard. To do so is better. If he wants he can recite Tasbih. If one added any Qira-ah to al-Fatihah after the first two Rak'at Sadatus Sahw is not required.
8. The follower will not read behind the Imam, whether in audible or in-audible Salah.²⁹
9. It is Wajib upon the Imam to read aloud in the two Rak'at of Fajr, Jumu'ah, the two 'Ids and the first two Rak'at of Maghrib and 'Isha.
10. Both the Imam and Munfarid reads in-audibly in all Rak'at of Zhuhr and 'Asr, the third Rak'ah of Maghrib and the last two Rak'at of 'Isha.
11. A Munfarid may choose to read loud or soft those Qira-ah which the Imam must read aloud [Maghrib, Esha and Fajr].
12. It is Sunnah for the Imam and Munfarid to read Tiwal al-Mufassal [long Surah] in Fajr and Zhuhr³⁰ Awsat [medium length]³¹ in 'Asr and

²⁹ Muslim narrates that Abu Musa al-Ash'ari رضي الله عنه narrated that Rasulullah ﷺ said, "And when he reads, then you keep silent." [Chapter on Tashshahud in Salah]

³⁰ From Surat al-Hujarat to al-Buruj

³¹ From Surat al-Tariq until al-Bayyinah

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'Isha and Qisar³² in Maghrib. This is for residents. Travellers should read what they may.

Question 153) Should the Imam or Munfarid read Bismillaah or Ta'awwuz aloud when the Qira-ah is loud?

A: No, they must be read softly.

Question 154) Should the Imam or Munfarid read Amin aloud after al-Fatihah?

A: No.

Question 155) Does a woman read aloud when praying a loud Salah on her own?

A: No.

Question 156) Can Qira-ah be specified in certain Salah?

A: Qira-ah should not be specified when it be construed that no other Qira-ah is allowed in that Salah. It is in fact Makruh to specify a certain Surah for all Salah or some Salah and never read anything else.

Question 157) If there is no Wajib specification, is there anything from the Sunnah about reading certain Surahs in some Salah, which if the Musalli chooses to read then he will be rewarded?

A: Yes, there do appear such Surahs which will be rewarded. Some are:

1. It is Sunnah to read Alif Lam Mim Tanzil in the first Rak'ah of Fajr of the Day of Jumu'ah, "Hal ata 'aalal Insan" in the second Rak'ah. [al-Bukhari and Muslim from Abu Hurayrah رضي الله عنه]
2. It is Sunnah to read Suratul Jumu'ah in the first Rak'ah of Salatul Jumu'ah and "Iza ja akal Munafiqun" in the second. [Muslim from Abu Hurayrah رضي الله عنه]
3. It is Sunnah to read "Sabbihisma Rabbikal A'la" in the first Rak'ah of Salatul Jumu'ah and "Hal ataka Hadithul Ghashiyah" in the second. [Muslim from Nu'man bin Bashir رضي الله عنه]

³² From Suratuz Zilzal till the end of the Quran

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4. It is Sunnah to read "Sabbihisma Rabbikal A'la" in the first Rak'ah of both 'Ids and "Hal ataka Hadithul Ghashiyah" in the second. [Muslim from Nu'man bin Bashir رضي الله عنه]

Salatul Witr

Question 158) How is Witr performed? How many Rak'at does it consist of?

A: Witr is three Rak'at prayed after 'Isna. It is not permissible before it. The method is to recite Takbir for beginning then Thana, Ta'awwuz, Bismillaah, al-Fatihah and the Surah thereafter. Then make Ruku' and two Sujud and then stand and pray the second Raka'ah as in any other Salah. At the end of it sit and read Tashshahud. Then stand for the third Rak'ah, read al-Fatihah and then a Surah. Then read Takbir³³, raising the hands to the ears³⁴. Read the Qunut³⁵ and upon completion³⁶ read Takbir and make Ruku'. Complete the Rak'ah like any other Salah's.

Question 159) Are al-Fatihah and a Surah read in all Rak'at of Witr?

A: Yes, in all.

³³ Ibn Abi Shaybah narrates from Shu'bah, "I have heard al-Hakam, Hammad and Abu Ishaq saying that after completion of Qira-ah, read Takbir and then Qunut."

³⁴ 'Abdurrahman bin al-Aswad narrated from his father who narrates that 'Abdullaah bin Mas'ud رضي الله عنه used to raise his hands in Qunut of Witr. [Ibn Abi Shaybah (390/3) Madinah edition; al-Imam al-Bukhari in *Juz Raf'il Yadayn*. In it he verifies that 'Abdullaah رضي الله عنه used to read al-Ikhlash in the last Rak'ah of Witr then raise his hands and read Qunut before Ruku']

³⁵ Ibrahim said, "Read in Qunut of Witr: Allaahumma Inna nasta'inuka wa nastaghfiruka." [Ibn Abi Shaybah 381/3] Abu 'Abdirrahman said, "Abdullaah bin Mas'ud taught us to read in Witr: Allaahumma Inna nasta'inuka wa nastaghfiruka wa numinu bika wa nuthni 'alaykal khayr." [Ibn Abi Shaybah]

³⁶ 'Alqamah narrates that Ibn Mas'ud رضي الله عنه and the Sahabah رضي الله عنهم of Rasulullaah ﷺ used to read Qunut in Witr before Ruku'. [Ibn Abi Shaybah (383/3)] 'Abdurrahman bin al-Aswad narrates from his father that when Ibn Mas'ud رضي الله عنه completed his Qira-ah, he read Takbir and then Qunut. Thereafter he made Takbir and Ruku'. [Ibn Abi Shaybah (383/3)]

Question 160) Is there Masnun Qira-ah in Witr?

A: Yes, it is Sunnah to recite in the first Rak'ah after al-Fatihah Surah al-A'la; al-Kafirun in the second and al-Ikhlās in the third. Other narrations add al-Falaq and an-Nas with al-Ikhlās to the third Rak'ah.³⁷

Question 161) Is Qunut read loud or soft?

A: It is soft, whether one is Imam, Munfarid or Muqtadi.

Question 162) Can Witr be performed in congregation?

A: Yes, it is Sunnah to perform it in congregation every night of Ramadan after Tarawih.

Question 163) Does the Imam read Qira-ah aloud in Witr?

A: Yes, in all three Rak'at.

Question 164) Is there Qunut in any Salah besides Witr?

A: No, unless it is recited due to a disaster which afflicts the Muslims. In that case Qunut is read whilst standing after Ruku'. The Imam will make du'a for the Muslims and against their enemies.

Sunnah and Nafl

Question 165) How many Rak'at of Sunnah are made before and after the Fard?

A: 12 Rak'at of Sunnah are emphasised. They are called Sunnah Muakkadah [emphasised]. Ummul Muminin 'Aishah radiyAllaahu 'anha narrated that the Nabi ﷺ said, "Allaah will build a house in Jannah

³⁷ At-Tirmizi narrates it from 'Aishah radiyAllaahu 'anha and an-Nasai from 'Abdurrahman bin Abzi. Ahmad narrates from Ubayy bin Ka'b and ad-Darami from Ibn 'Abbas. These two do not mention al-Falaq and an-Nas. [See Mishkatul Masabih, Chapter on Witr]

for he who is constant on twelve Rak'at of Sunnah – 4 before Zhuhr, 2 after, 2 after Maghrib, 2 after 'Isha and 2 before Fajr.³⁸

Shurayh narrates that 'Aishah radiyAllaahu 'anha said, "Rasulullaah ﷺ never prayed 'Isha, except that he would then come by me and pray 4 or 6 Rak'at."³⁹

Question 166) Are some of these more emphasised than the others?

A: Yes, the most emphasised are the two before Fajr, then the four before Zhuhr. 'Aishah radiyallaahu 'anha said, "The Nabi ﷺ did not emphasise any Nafl as much as he placed importance on two Rak'at before Fajr."

She also said that Nabi ﷺ, "Never left the 4 before Zhuhr and 2 before early morning." [al-Bukhari and others have narrated both narrations]

Question 167) Are there Sunan before and after Jumu'ah?

A: Yes, there are 4 Rak'at before and 4 after.⁴⁰

³⁸ This is the words of at-Tirmizi, similarly narrated by an-Nasai. At-Tirmizi adds, "In the chapter there are also narrations from Umm Habibah, Abu Hurayrah, Abu Musa and Ibn 'Umar." He then narrates the narration of Umm Habibah and declares it authentic. Muslim also narrates the Hadith of Umm Habibah and in the end says that she said, "I then always prayed these."

³⁹ Whoever practices upon these four or six mentioned does well. However, only two are emphasised because of the narration encouraging consistency on it. Abu Dawud narrates the Hadith of Shurayh.

⁴⁰ The 4 afterwards are based on Muslim's narration from Abu Hurayrah who narrated that Rasulullaah ﷺ said, "When you pray after Jumu'ah, pray 4." A group other than al-Bukhari narrate that Rasulullaah ﷺ said, "When one of you prays Jumu'ah he must pray four afterwards." The first indicates Istihbab and the second Wujub. We have therefore combined the two as Sunnah Muakkadah. As for the four before, it is due to the consistency of Rasulullaah ﷺ on the four after Zawal which includes Jumu'ah as well.

I say that Muslim has narrated that Abu Hurayrah narrated that Rasulullaah ﷺ said, "He who makes Ghusl then comes for Jumu'ah and prays what has been set for him and then remains silent until the Khutbah is completed and then prays with those with him is forgiven of his sins from that Jumu'ah until the other and the three days extra."

That is according to Imaam Abu Hanifa رحمته الله. According to Imaam Abu Yusuf رحمته الله the Sunnah is 6 after Jumu'ah.

Question 168) Is there Sunnah before 'Asr?

A: Yes, there is a Hadith which encourages 4 Rak'at before 'Asr. Rasulullah ﷺ said, "May Allaah have mercy on a man who prays four before 'Asr." [Abu Dawud]

'Ali رضي الله عنه narrates that Rasulullah ﷺ used to pray two Rak'at before 'Asr. [Abu Dawud]

Question 169) Is there Sunnah before 'Isha?⁴¹

A: Four Rak'at before 'Isha is Mustahab.

Question 170) What is the ruling of these Sunan?

A: The Sunan before 'Asr and before 'Isha are not Muakkadah.

It is thus clear that there is Salah before the Khutbah. It refutes those who deny that there is Salah before Jumu'ah. Abdullaah bin Mas'ud رضي الله عنه used to pray 4 Rak'at before Jumu'ah as per the narration of 'Abdurrazaq (247/3) and Ibn Abi Shaybah (143/3).

'Abdurrazaq narrates from ath-Thawri who narrates from 'Ata bin as-Saib who narrates from Abul Ahwas as-Sulami, "Abdullaah used to order us to pray 4 Rak'at before Jumu'ah and after it two and then four."

Al-Hafizh said in *ad-Dirayah*, "The men of this narration are reliable."

It is *mawquf* but regarded as *Morfu'* because he ordered it because of what was established from the Nabi ﷺ.

At-Tahawi narrates in his chapter on optional prayers of the day and night from Jabalah bin Sahim who narrates that 'Abdullaah bin 'Umar used to pray 4 before Jumu'ah with a single Salam. After Jumu'ah he would pray 2 then 4. an-Nimwi said in *Atharus Sunan* that the chain is authentic.

⁴¹ Al-Halabi says in his commentary on *Munyatul Musalli*, "The four before are not mentioned specifically in a Hadith. Proof is taken from the Hadith of 'Abdullaah bin Mughaffal رضي الله عنه that Rasulullah ﷺ said twice, "Between Azan and Iqamah there is Salah." Then he said after the third time, "For who wants to." This is when there is no obstacle to praying before the Fard and is regarded as Mustahab. Four specifically is based on the view of Imaam Abu Hanifa رحمته الله that the word, "Salah" in its complete form and quality indicates 4."

Question 171) Is there Sunnah Qira-ah in any of these Sunan?

A: Yes, at-Tirmizi narrates that 'Abdullaah bin Mas'ud رضي الله عنه said, "I cannot count the amount of times I heard Rasulullah ﷺ read in the two Rak'at after Maghrib and the two Rak'at before Fajr, 'Qul ya ayyulhal Kafirun...' and 'Qul HuwAllaahu Ahad.'"

Muslim narrates from Abu Hurayrah رضي الله عنه that Rasulullah ﷺ read in the two Rak'at before Fajr, 'Qul ya ayyulhal Kafirun...' and 'Qul HuwAllaahu Ahad.'"

Muslim narrates from Ibn 'Abbas رضي الله عنه that Rasulullah ﷺ used to read in the first Rak'ah before Fajr, "Qulu amanna billahi wa ma unzila ilayna..." [al-Baqarah] and in the last Rak'ah, "Amanna billahi wash-had bi-anna Muslimun..." [Al-'Imran]

Muslim also narrates from Ibn 'Abbas رضي الله عنه that Rasulullah ﷺ used to read in the Rak'at before Fajr, "... amanna billahi wa ma unzila ilayna..."⁴² and from Al 'Imran, "...Ta'alaw ila kalimatin sawaim baynana wa baynakum

Question 172) Besides Fardh, Witr and the above Sunan are there any other Salaats prescribed?

A: Yes, Shari'ah allows one to perform whatever Nafl one is capable of day and night. There is great virtue⁴³ in that. The Makruh times we have mentioned should however be avoided.

⁴² It means that he read in the first Rak'ah, "Qulu ammannah billahi..." until the end of the Aayah. It is clarified in *al-Bayhaqi* that he read until, "wa nahnu lahu Muslimun." In the second Rak'ah he read the complete Aayah from Al 'Imran from, "Qul ya Ahlal Kitabi ta'alaw ila kalimatin..."

⁴³ Abu Hurayrah رضي الله عنه narrates that he heard Rasulullah ﷺ saying, "The first thing the slave will be questioned about concerning his deeds on the Day of Qiyamah is his Salah. If it is in order he is successful and victorious. If it is unsound then he has failed and lost. If there is a deficiency in his Fard, then the Rabb Most Blessed and High says, 'See if My slave has any Nafl to make up for the deficiency in his Fard.' Then all the rest of his deeds are treated in the like that." [Abu Dawud]

Question 173) Is the Nafil you mentioned for all times and conditions? Is there narrated anything about extra virtues at special times?

A: Yes, the virtue of Nafil at the end of the night has been narrated.⁴⁴ It is called Salatut Tahajjud. Also narrated is ad-Duha [early morning]⁴⁵; the nights of Ramadan especially Laylatul Qadr [Night of Power],⁴⁶ after Wudu,⁴⁷ when entering the Masjid before one sits,⁴⁸ when a matter befalls one,⁴⁹ when repenting [Tawbah],⁵⁰ when in need [Hajah]⁵¹ and when seeking guidance [Istikharah].⁵²

⁴⁴ Abu Umamah رضي الله عنه narrates that Rasulullaah ﷺ said, "You should perform the Salah of the night. It is the way of the pious before you and draws you closer to your Rabb. It compensates for evil and erases sins." [at-Tirmizi]

⁴⁵ Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ said, "He who guards the two Rak'at of Duha will have his sins forgiven even if they are equal to the foam of the sea." [Ahmad, at-Tirmizi and Ibn Majah]

Mu'azah asked 'Aishah, How many Rak'at of Duha did Rasulullaah ﷺ pray?" She replied, "Four and he increased how much Allaah willed." [Muslim]

'Aishah radiyAllaahu 'anha used to pray 8 Rak'at of Duha and used to say, "I would never leave it even if my parents were to be resurrected for me." [Malik]

⁴⁶ Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ said, "He who fasts Ramadan with Iman and hoping for reward has his passed sins forgiven. He who prays the Salah of Ramadan with Iman and hoping for forgiveness has his passed sins forgiven. He who prays on the Night of Power with Iman and hoping for forgiveness has his passed sins forgiven." [al-Bukhari and Muslim]

⁴⁷ Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ said to Bilal رضي الله عنه at the time of Fajr, "O Bilal! Tell me what deed you have done in Islaam which you have most hope in? Indeed I have heard the stepping of your sandals before me in Jannah." Bilal said, "I have no greater hope in any deed other than whenever I make Wudu at any time of the day or night I pray with that Wudu however much Salah has been written for me." [al-Bukhari and Muslim]

⁴⁸ Abu Qatadah رضي الله عنه narrates that Rasulullaah ﷺ said, "When one of you enters the Masjid he should pray two Rak'at before sitting." [al-Bukhari and Muslim]

⁴⁹ Huzayfah رضي الله عنه narrates, "When any difficulty befell the Nabi ﷺ he would resort to Salah." [Abu Dawud]

Question 174) How many Nafil Rak'at should be prayed with a single Salam?

A: In the day one may pray two or four Rak'at of Nafil with a single Salam. More than that will be Makruh. At night one may pray up to 8 Rak'at with a single Salam according to Imaam Abu Hanifa رحمته الله. According to Imaam Abu Yusuf رحمته الله the limit at night is two.

Question 175) What do you say about someone who started Nafil Salah and then broke it off?

A: Nafil becomes compulsory to complete once it has commenced. It should therefore be repeated.

Question 176) If he intended four, sat in the second and broke off during the last two Rak'at, how many should he repeat?

A: He should repeat two because the first pair was completed. Imaam Abu Yusuf رحمته الله says that he should repeat all four.

⁵⁰ 'Ali رضي الله عنه narrates: Abu Bakr narrated to me and Abu Bakr was truthful. He said, "I heard Rasulullaah ﷺ saying, 'There is no man who sins and then arises to make Wudu, pray Salah and seek Allaah's forgiveness except that Allaah forgives him.'" [Ibn Majah]

⁵¹ 'Abdullaah bin Abi Awfa narrates that Rasulullaah ﷺ said: He who has a need from Allaah or any son of Adam should perform Wudu and it should be a proper Wudu. Let him pray two Rak'at, praise Allaah and offer salutations upon His Nabi ﷺ. Let him then recite, "There is no illah but Allaah the Most Clement and Generous. Pure is Allaah the Rabb of the Magnificent Throne. All praise be to Allaah Rabb of all the worlds. I ask of You that which necessitates Your mercy, resolve which earns Your forgiveness, bounty of all good and safety from all wrong. Do not leave me with any sin except that You have forgiven it, no worry except that You ease it and no need with which You are pleased with except that You fulfil it, O Most Merciful of those who show mercy." [at-Tirmizi and Ibn Majah]

⁵² Jabir رضي الله عنه narrates: Rasulullaah ﷺ used to teach us Istikharah in all matters just as he taught us a Surah of the Quran. He said, "When a matter worries one of you, he should pray two Rak'at outside of the Fard and then say, [the famous Istikharah du'a]" [al-Bukhari]

Question 177) Is it allowed to pray Nafil sitting when one is able to stand?

A: Yes, but the reward is halved.

Question 178) What do you say about starting Nafil Salah standing and then sitting?

A: According to Imaam Abu Hanifa رحمته الله it is allowed. His two companions say that it is only allowed with an excuse.

Question 179) Is it allowed to pray Nafil on a beast?

A: Yes, one may pray riding on a beast, facing whatever direction the animal is facing and making the postures by indication. This is only allowed travelling out of the city.

Qada [fulfilling missed Salah]

Question 180) When should one fulfil a missed Salah?

A: As soon as one remembers, except during the three times Salah is forbidden.

Question 181) When a Salah has been missed, how does one fulfil it?

A: He should perform them in the same order as they would originally have been prayed. This is Wajib on one who is Sahibut Tartib [one with sequence].

Question 182) What does "One with sequence" mean?

A: In the terminology of the Fuqaha one with less than six omitted Salah is called, "One with sequence." It is Wajib on him to fulfil the Salah which are on time as well as the missed ones in their correct sequence. It is Wajib on him to pray the omitted Salah in their correct order. He may not pray the "on time" Salah before the missed ones. If he does the opposite then he must repeat what he prayed.

For example, one of sequence prayed a missed 'Asr but he still has the missed Zhuhr to fulfil. It is Wajib on him to then pray the missed Zhuhr and repeat the missed 'Asr.

An example of "on-time" versus missed – a man of sequence remembered a missed Salah at the time of Zhuhr. He then prayed the Zhuhr before the missed Salah. It is Wajib for him to pray the missed Salah then repeat the Zhuhr.

Question 183) Is sequence Wajib between Witr and Fard?

A: Yes. If he does pray the Witr before the 'Isha, then it is Wajib to repeat the Witr after praying 'Isha. If he fell asleep without having prayed Witr and dawn has set in, it is Wajib for him to pray Witr before he prays Fajr. If he does the opposite he must repeat Fajr.

Question 184) Does the Wajib nature of sequence drop under any circumstances?

A: Yes, it does in any of the following circumstances:

1. When the number of missed Salah reaches 6, excluding Witr.⁵³
2. Forgetting a missed Salah.
3. When running out of time.

When the missed Salah reaches 6, he may pray first whichever one he wishes to. He may pray the Salah which is "on time" even if he remembers that he has missed Salah.

When he forgets that he has a missed Salah and prays a Salah in its correct time that Salah is valid and need not be repeated.

If he awakens just before sunrise and he remembers that he has missed 'Isha or Witr, he should pray Fajr then and the 'Isha and Witr after the sun has sufficiently risen. He need not repeat Fajr, because sequence was dropped due to lack of time.

⁵³ *Ad-Durr al-Mukhtar* (488/1) states sequence is not necessary when time is short or when the missed Salah is forgotten. These are excuses. When they reach six according to belief they will be difficult to fulfil in sequence. Ibn 'Abidin said in his *Hushiyah* that "according to belief" to exclude that which is Fard in practice, i.e. Witr. Even though sequence is Wajib between Witr and the others which are Fard, Witr will not be added to the missed ones in this instance because Witr is a completion of the deeds of the day and night. The numbers increase through the increase of times, and Witr does not have an independent time of its own.

Nullification of Salah

Question 185) What actions and words nullify Salah?

A: The actions are:

1. Eating or drinking, even if forgetfully.
2. Performing many actions not of Salah.
3. Deliberately talking.
4. Walking three or more steps continuously.
5. Turning the chest away from the Qiblah.
6. Unconsciousness.
7. Insanity.
8. Hadath Akbar, whether through looking or nocturnal emission.
9. Standing in line with a woman who may be sexually desired in a general Salah in which she has joined from the Tahrimah and she is in the same place without any obstacle.
10. Fulfilling a Rukn [essential deed of Salah] with an exposed 'awrah or Najasah which prevents Salah.
11. Laughing so loud that you can hear your laugh.

The words are:

1. To speak a word, be it deliberately, forgetfully or by mistake.
2. Making Salam to someone.
3. Returning Salam verbally.
4. To sigh.
5. To groan.
6. To moan.
7. To verbally cry due to pain or calamity, but not due to remembering Jannah or Hell.
8. Replying to a sneezer, "May Allaah have mercy on you."
9. Replying, "La ilaha illAllaah," to one asking about Allaah having a partner.
10. Saying, "Inna lillah wa inna ilayhi raji'un," when hearing bad news.
11. Saying, "Alhamdulillah," when hearing good news.
12. Saying, "La ilaha illAllaah" or "SubhanAllaah" out of surprise.
13. Anything which is a reply or addressing someone, e.g. saying as speech, "Ya Yahya khuzil Kitaba biquwah – O Yahya take the Book with strength."

14. Rectifying someone who is not your Imam.
15. Such a mistake in Qira-ah or Takbir which corrupts the meaning, such as extending [madd] the Hamzah of Allaahu Akbar.⁵⁴

Twelve points of difference

1. If one who performed Tayammum sees water whilst in Salah and he is able to use it.
2. He had wiped his Khuff and the time of wiping expired whilst in Salah.
3. He removed both his Khuff with minimal action.
4. He was unable to read Quran and then learnt an Aayah.
5. He was naked and found clothing.
6. He had to pray by indication and suddenly was able to make Ruku' and Sujud.
7. He remembered that he still had to pray the Salah which was before the one he was engaged in, and he was a man of sequence.
8. The Imam who could read Qira-ah lost his Wudu and appointed one unable to read to continue the Salah.
9. The sun rose during Fajr.
10. The Waqt of 'Asr came during Jumu'ah.
11. He had wiped his bandage. It fell off and it proved to be healed.
12. A Mustahadah's bleeding stopped [woman who bleeds outside of menses].

According to Imaam Abu Hanifa رحمته الله the Salah is void even if it occurs in the final sitting after sitting the duration of Tashshahud.

According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the Salah is complete if any of these scenarios occurred after sitting in the final sitting for the duration of Tashshahud.

Makruh acts in Salah

Question 186) List those Makruh acts which should not be done in Salah?

A: It is Makruh for the Musalli to:

⁵⁴ It becomes a question, "Is Allaah the greatest?"

1. To play with his body or clothing.
2. To move pebbles, unless they prevent him from Sujud. In that case he may level them once.
3. To pop or intertwine his fingers.
4. To place his hands at his waist.
5. To let his clothes hang down or pull them up.
6. To plait his hair.
7. To turn left or right by the movement of the neck.
8. To sit like a dog.
9. To spread one's arms on the ground in Sajdah.
10. To reply Salam with the hand.⁵⁵
11. To sit cross-legged, except with an excuse.
12. To wipe the dust off his forehead and nose.
13. To put something in his mouth which will prevent Qira'ah.
14. Anything which distracts one and prevents concentration and humility is Makruh.

Congregation and Imamah [leading the Salah]

Question 187) Explain the virtue of Jama'ah [congregation] and its status in Shari'ah.

A: Jama'ah is Sunnah Muakkadah for men and has great reward. Rasulullaah ﷺ said, "Salah with jama'ah is 27 times greater than Salah alone." [al-Bukhari and Muslim from Ibn 'Umar رضى الله عنه]

Abud Darda رضى الله عنه narrates that Rasulullaah ﷺ said, "There are never three people in a town or countryside who do not establish Salah together except that the devil overpowers them. So uphold Jama'ah for the wolf eats the far off sheep." [Ahmad, Abu Dawud and an-Nasai]

Abu Hurayrah رضى الله عنه narrated that Rasulullaah ﷺ said, "By He who hold my life in His Hand! I feel like ordering firewood to be gathered. I shall then order Azan for Salah to be called and I'll order someone a man to lead the people while I go and burn the houses of those men who are still at home." [al-Bukhari]

⁵⁵ If he returns it verbally the Salah is nullified.

Question 188) Who is most entitled to be Imam?

A: The most entitled is he who has most knowledge of the Sunnah and Shari'ah, especially the rules of Salah. This is according to Imaam Abu Hanifa رضى الله عنه. Imaam Abu Yusuf رضى الله عنه says that he who is most versed in reading Allaah's Kitab is more entitled. If they are equal, then the most pious. If they are equal, then the eldest.

Question 189) Are there people whom it is Makruh to make Imam?

A: Yes, it is Makruh to make Imam a slave, a Bedouin, an open sinner, a blind man who is not careful with purity and illegitimate offspring. Nevertheless, if they lead the Salah remains valid.

Question 190) May women attend Jama'ah in the Masjid?

A: It is Makruh. Their homes are better for them. Imaam Abu Hanifa رضى الله عنه said that an old woman who does not display beauty may attend Fajr, Maghrib and 'Isha. Imaam Abu Yusuf رضى الله عنه and Imaam Muhammed رضى الله عنه said that she may attend all Salah.

Question 191) What do you say about a Jama'ah of women?

A: It is Makruh. If however it is done, then the Imam will stand in their centre just as when there is a Jama'ah of naked people.

Question 192) Where does the follower stand if he is alone with the Imam?

A: The Imam will place him at his right. If more join in he will move forward.

Question 193) If there is only one woman follower, where does she stand with the male Imam?

A: Behind him.

Question 194) If the followers are men, women and children, how do they stand?

A: The men will first form their rows behind the Imam, then the children, then hermaphrodites then women.

Question 195) What are the rules of following the Imam?

A: The details are as follows:

1. One praying Fard can pray behind an Imam praying Fard, if both are praying the same Fard. When they differ, it is not allowed to follow, e.g. one prays Zhuhr and the other 'Asr; or one prays the Zhuhr of today and the other the Zhuhr of yesterday.
2. One with Tayammum can lead those with Wudu.
3. One who has wiped his Khuff can lead those who washed their feet.
4. One praying sitting due to illness can lead those praying standing.
5. One who must perform full Ruku' and Sajdah cannot follow one who makes by indication.
6. One praying Nafl can follow one praying Fard.
7. The opposite is not allowed.
8. A non-excused cannot follow an excused, e.g. a man with continuous urine or passing wind or a wound which is not stopping cannot lead a man who is healthy and has proper purity.
9. A pure woman cannot follow a Mustahadah.
10. One able to recite Qira-ah cannot follow one who is unable to read the minimum Fard Qira-ah.
11. A clothed person cannot follow a naked person.

Question 196) What should a follower do when he learns that Imam did not have Taharah?

A: He must repeat the Salah.

Joining the Fard ⁵⁶

Question 197) What should a Munfarid do if he completed a Rak'ah of Zhuhr or 'Isha with the Sujud and congregational Salah commences?⁵⁷

⁵⁶ This part is not in *al-Quduri*. I have added it from *Fat-hul Qadir* and *al-Fatawa al-Hindiyah*

⁵⁷ i.e. actual Salah of the Imam commences, not merely Iqamah. In that case if the Munfarid did not complete the Rak'ah with Sujud, he completes the two Rak'at. There is no difference amongst our 'Ulama about this. [*an-Nihayah*] [Refer to *al-Fatawa al-Hindiyah* 119/1]

A: He adds another Rak'ah and joins the Jama'ah.⁵⁸

Question 198) If he did not yet make Sajdah?

A: He will break off his Salah and begin with the Imam.

Question 199) What is the ruling if he completed the Sajdah of the third Rak'ah of Zhuhr or Asr and Jama'ah commences?

A: He will complete his Salah and follow the Imam as Nafl.

Question 200) If he did not yet make Sajdah of the third Rak'ah?

A: He will break off his Salah and join the Imam.

Question 201) How does he break off?

A: He has a choice. If he wishes he can sit and make one Salam; or he recite Takbir standing and intend joining the Salah of the Imam. In that way both the breaking off of the Salah he was praying as well as the joining with the Imam's Salah is achieved.

Question 202) Explain what happens in 'Asr.

A: If the Munfarid performed one or three Rak'at and the Jama'ah commenced then the ruling is the same as we mentioned in breaking off or completing in Zhuhr and 'Isha. The difference is that he will not join the Imam after completing 4 Rak'at because Nafl after 'Asr is Makruh.

Question 203) What does a Munfarid do if he has prayed a Rak'ah or two of the Fard of Fajr or Maghrib and the Jama'ah commences?

A: If he has prayed a Rak'ah of Maghrib or Fajr he must break off his Salah whether he made Sajdah or not. He will also break off if he did not complete the Sajdah of the second Rak'ah. He will then join the Imam in these three scenarios. If he has made Sajdah of the second Rak'ah he will complete the Salah and not break it.

⁵⁸ What does he do if was sitting in Tashshahud of the second Rak'ah of Zhuhr or 'Isha and Jama'ah commences? He will make Salam after the Tasshahud and join the Imam.

Question 204) Will he then join the Imam after completing as above?

A: He will not join the Imam in this case.⁵⁹

Question 205) What should a man do who has begun his Sunnah before Zhuhr or Jumu'ah and the Jama'ah or Khutbah begins?

A: He makes Salam at the end of two Rak'at and then joins the Imam in Zhuhr or listens to the Khutbah as the case may be.⁶⁰

Question 206) If he began Nafl and the Jama'ah began?

A: He should complete the pair he is engaged in and not increase upon it.

Question 207) A man reaches the Imam who is praying Fajr, and the man did not yet pray the two Sunnah before. What should he do?

A: If he fears that he will miss a Rak'ah but will at least gain the second Rak'ah, he should pray the two Rak'at Sunnah at the Masjid entrance and then join the Imam. If he fear that he will miss both, then he should leave the Sunnah and join the Imam.⁶¹

Question 208) Someone missed Fajr and intends to pray it after sunrise. Should he pray the Sunnah as well or is the Fard sufficient?

⁵⁹ The author of *al-Kanz* says, "If he prayed a Rak'ah of Fajr or Maghrib and Jama'ah begins, he should break off and join the Imam."

⁶⁰ That has been narrated from Abu Yusuf. It is also said that he should complete it. [*al-Hidayah*]. Ibn Humam says in *Fathul Qadir* that completing Salam upon two Rakat is better because he can complete it after the Fard and the two Rak'at are not null by making the Salam. He thus neither omits the Fard of listening nor misses his Salah without excuse.

⁶¹ That is per *al-Hidayah*. *Al-Kafiyah* states, "The book does not mention what he should do if he thinks he will at least get the final sitting, but it is obvious from the statement that if he fears missing both Rak'at he should join the Imam, hence in this situation he should also join the Imam. The Faqih Abu Ja'far narrates a view of Imaam Abu Hanifa رحمته الله and Abu Yusuf that he should pray the Sunnah, because according to them attaining the Tashshahud is like attaining the Rak'ah."

Al-Hidayah states, "The stipulation of praying at the entrance of the Masjid is due to it being Makruh to pray whilst the Imam is in Salah."

A: He should pray the Sunnah as subsidiary to the Fard if he fulfils it before Zawal. If after Zawal then he should only pray the Fard.⁶²

Question 209) If he did not pray the Sunnahs of Fajr due to joining the Imam or due to lack of time, when should he make it up?

A: According to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله it is not made up, whether before or after sunrise. Imaam Muhammed رحمته الله said, "I prefer that it be made between sunrise and Zawal."

Question 210) If he misses the Sunnah before Zhuhr, when should he make it up?

A: He should pray it after the Fard of Zhuhr in its time. If the time passes then it is not performed.

Question 211) If he is intending to pray the Sunnah which he missed before the Fard, after the Fard, must he pray the four missed Rak'at first or the two which come after the Fard?

A: He should first pray the two Rak'at then the missed four.⁶³

Question 212) If one misses the Sunnah before Jumu'ah should one pray it after Jumu'ah?

A: Yes, and its rules are the same as the four Rak'at before Zhuhr.⁶⁴

⁶² *Al-Hidayah* states that there is a difference amongst the Mashaikh regarding after Zawal.

Al-Inayah states: Some Mashaikh say that it should be read even then as a subsidiary to Fajr not as an aim in itself. Others say it should not be read at all. *Al-Kafiyah* quotes from *al-Muhit* that the Sunnah is not read after Zawal if left with the Fard. It does not mention any difference of opinion.

⁶³ There is a difference on what is preferred. *Al-Kanz* states that the four are performed before the two.

Ibnul Humam said in *Fathul Qadir*, "Praying the two first is better because that is its Sunnah time. The Sunnah time of the four has been lost. The Sunnah time of the two should not now also be lost without necessity."

⁶⁴ *Al-Bahr* states, "The ruling of the four before Jumu'ah is the same as the four before Zhuhr as is not hidden."

Hadath in Salah

Question 213) What should a Musalli do if afflicted with Hadath during Salah?

A: He should leave the Salah, renew his Wudu and continue his Salah where he left off. To start anew is better.

Question 214) If he is the Imam, what should he do with the followers?

A: He appoints one of the followers as Imam and the new Imam completes the remainder of the Salah.

Question 215) What if the appointed one is a Masbuq [did not join the Salah from the beginning]?

A: He will lead the others for the rest of the Salah and then appoint a Mudrik (one who had joined the Salah from the beginning) and the Mudrik will complete the Salam as the Imam.

Question 216) What should the Musalli do if Hadath afflicts him after he sat for the duration of Tashshahud in a sitting when he must make Salam?

A: He should leave the Salah, make Wudu and complete the Salam.

Question 217) What is the ruling if he spoke after the Hadath?

A: His Salah is void and he cannot continue it, whether he spoke deliberately, forgetfully or by mistake.

Question 218) If that Musalli needs to walk to some place for Wudu or turns away from Qiblah for that purpose does his Salah break?

A: No, that is overlooked even if he walks three steps or more.

Question 219) If Hadath Akbar afflicts the Musalli, can he continue with the Salah [after purity]?

A: He who sleeps in Salah and has Ihtilam, or becomes mad, or becomes unconscious, or laughs loudly in Salah then the Salah is

nullified. He cannot continue on it. He should start his Salah anew after Ghusl in the first case and after Wudu in the remaining three cases.

Sujudus Sahw [Sujud of forgetfulness]

Question 220) What should a Musalli do when forgetful in Salah?

A: If he adds an action which is an act of Salah, e.g. he repeated the Ruku' or added a Rak'ah, or he forgets a Wajib, e.g. he forgot al-Fatihah or the Surah after it, or the first sitting or one of the two Tashshahud, or Qunut in Witr, or the Takbirs of 'Id, or the Imam read aloud in a soft Salah or soft in a loud Salah; then Sujudus Sahw must be made. It is two Sajdahs after the final Tashshahud then one Salam is made then another Tashshahud and then Salam is made.⁶⁵

Question 221) Is Sujudus Sahw Wajib on the followers if the Imam makes a mistake?

A: Yes, it is Wajib on the Imam and the followers.

Question 222) If the Imam does not make the Sujud what does the follower do?

A: Then the follower will also not make Sujud.

Question 223) If the follower forgets, does he have to make Sujud?

A: Neither he nor the Imam will make Sujud.

Question 224) What should someone do if he forgets the first sitting in a three or four Rak'ah Salah?

A: He should examine his state. If he is closer to sitting, he should return to the sitting, recite Tashshahud and complete the rest of the Salah. There is no Sujudus Sahw. If however he is closer to standing then he should not return to sitting but continue to the standing position and complete his Salah. After the final Tashshahud he should make Sujudus Sahw and make Salam.

⁶⁵ The preferred view is that he recite Salat 'alan Nabi ﷺ and du'a in the final sitting. It is also said that he should recite in both sittings as a precaution.

Question 225) What must he do if he forgot the final sitting?

A: If he forgot to sit in a 4 Rak'at Salah and stood for the fifth Rak'ah without having yet made Sajdah, then he should abandon the fifth Rak'ah and return to the sitting. He should make Sujudus Sahw.

Question 226) What must he do if he made the Sajdah of the fifth Rak'ah?

A: The Fard status of the Salah is nullified because the Fard of the final sitting has been omitted. It now becomes Nafil and he should add a sixth Rak'ah.⁶⁶

NOTE: Deduce from the above rule what to do when one forgets the final sitting in a two or three Rak'at Salah.

Question 227) What should he do if he sat in Tashshahud of the fourth Rak'ah then rose thinking that it was the second Rak'ah and remembered the correct number?

A: He should return and sit if he did not make Sajdah for the fifth Rak'ah. He should make Sujudus Sahw and his Salah is valid.

Question 228) And if he did make Sajdah of the fifth Rak'ah?

A: He will continue with a sixth Rak'ah and make Sujudus Sahw. The first four Rak'at are those he intended at Tahrimah and extra two are Nafil.

Question 229) What is the ruling of one who is doubting in his Salah if he prayed three or four Rak'at?

A: If that is the first time that happened in his life he must start the Salah anew. If it happened often then he should continue with what he thinks to be most probable and sit at every possibility of sitting.⁶⁷ If he does not have a probable thought then he should

⁶⁶ If he does not add the extra Rak'ah, there is nothing against him as per *al-Hidayah*. Does he make Sujudus Sahw? *Fathul Qadir* states, "There is no Sajdah because the deficiency of nullification is not repaired with Sajdah."

⁶⁷ *Al-Inayah* gives an example: If the doubt arose in a 4 Rak'at Salah whether it is the first or second Rak'ah he should act upon whatever his self-examinations says. If there is no conclusion then, he should make it the least, i.e. the first Rak'ah. Yet he should sit on the possibility that it is the second for the sitting is Wajib. Then in his next Rak'ah he must sit again because he has

continue with what he is certain of, i.e. the least amount and make Sujudus Sahw in both situations.⁶⁸

Sujudut Tilawah

Question 230) What is the reality of the single Sajdah we see readers of the Quran performing during their Tilawah [recitation]?

A: That Sajdah is called Sajdatut Tilawah. It is Wajib upon one who recites or hears an Aayah of Sajdah, whether he intended to hear the Aayah or not.

acted on it being the second. In his next Rak'ah he must sit on the possibility that it is the fourth Rak'ah. In the Rak'ah thereafter he must sit because he has acted on it being the fourth in which sitting is Fard. Deduce the same rule on a three Rak'at Salah.

⁶⁸ *Al-Quduri* does not mention Sujudus Sahw when continuing on the least or on the most probable.

Ad-Durr al-Mukhtar mentions that Sujudus Sahw is Wajib in all scenarios of doubt, whether it be self-examination or continuing on the least.

As-Siraj states that Sujudus Sahw is made when one continues on the least; and when he acts on the most probable thought after thinking for the duration of a Rukn.

The text of *al-Fath* is as follows, "If his examination reveals something he will complete his Salah upon that and make Sujudus Sahw. Similarly in all scenarios of examination or continuing on the least Sujudus Sahw will be made... If his examination does not reveal anything then he will continue on the least.

Ibn 'Abidin ash-Shami supports this in *as-Siraj*, "When he ponders and his thought reaches a probability, then it is compulsory for him to act upon it. There is no cause for Sujud to be Wajib on him except if he takes long to think as has been explained."

I say that what is in *al-Fath* is correct because it is supported by an authentic Hadith of al-Bukhari and Muslim. 'Abdullaah bin Mas'ud رضي الله عنه narrates from Rasulullah ﷺ, "When one of you doubts in his Salah let him ponder what is correct and complete upon that. Then he should make Salam and two Sajdah."

There is no *Nass* [explicit text] in the clause of Sajdah becoming Wajib when thinking long. It is however a cause for Sajdah according to the Ahnaf when one pauses for the duration of a Rukn without Qira-ah.

Question 231) What are the numbers of these Aayah and in which Surahs do they occur?

A: They occur in the following 14 Surahs:

1. al-A'raf
2. ar-Ra'd
3. an-Nakhl
4. al-Isra
5. Maryam
6. al-Hajj
7. al-Furqan
8. an-Naml
9. Alif Lam Mim Sajdah
10. Sad
11. Ha Mim Sajdah
12. an-Najm
13. al-Inshiqaq
14. al-'Alaq

The Aayah of Sajdah are well known amongst those who memorise the Quran, and signs are indicated in the Mus-haf as well.

Question 232) When the Imam recites an Aayah of Sajdah, is it Wajib upon the followers to make the Sajdah as well?

A: Whether the Imam reads it softly or loudly and makes Sajdah, the followers will make Sajdah with him.

Question 233) If the follower recites the Aayah of Sajdah, is the Sajdah necessary upon him and the Imam?

A: It is not compulsory upon either one of them.

Question 234) Is the Sajdah Wajib upon people who are in Salah, and they hear a man who is not in with them in Salah reciting a Sajdah Aayah?

A: It is Wajib, but they should make it after Salah, not during it.

Question 235) If they perform it in Salah, will it suffice?

A: No.

Question 236) Will that extra Sajdah nullify their Salah?

A: No.

Question 237) A man read an Aayah of Sajdah outside of Salah. He does not make the Sajdah. He then performs Salah and recites the same Aayah in it. If he performs a Sajdah for it, will it suffice for both recitations?

A: Yes, if both recitations were in the same Majlis (place and time).

Question 238) What do you say about a man who read a Sajdah Aayah outside of Salah and made the Sajdah; then he commenced Salah and read the same Aayah in it. Does his first Sajdah suffice?

A: It does not suffice. He must make another Sajdah for that recitation.

Question 239) Does one Sajdah suffice for repeating the same Sajdah Aayah?

A: One Sajdah will suffice if he repeats the same Aayah in the same Majlis. If he changes Majlis, the Sajdah equal to the number of Majlis is Wajib upon him. If he reads several Aayah of Sajdah, he must make Sajdah for each Aayah, even if it be in the same Majlis.

Question 240) How should Sajdatut Tilawah be made?

A: Recite Takbir without raising the hands. Make a Sajdah then say Takbir and arise. There is no Tashshahud or Salam.

Salah of the Sick

Question 241) How should a sick person who cannot stand pray?

A: A sick person who is unable to stand in Salah, should sit and make Ruku' and Sujud.

Question 242) If he is unable to make Sajdah and Ruku'?

A: He should indicate the Ruku' and Sujud. The Sujud should be lower than the Ruku'. He should not raise anything to his head to prostrate thereon.

Question 243) If he is unable to sit?

A: He should lie on his back with his legs towards the Qiblah with something below his head to raise it. He should face the Qiblah and pray like that, lying down and doing Ruku' and Sujud by indication.

Question 244) What do you say about one who prays, laying on his side?

A: It is permissible if he lies on his side, praying with his face to the Qiblah and indicating his Ruku' and Sujud.

Question 245) If he is unable to indicate with his head, can he indicate with his eyes, eyebrows or heart?

A: He cannot indicate with anything besides his head. If he is unable to, then he should delay his Salah until he can.

Question 246) How should one who can stand but cannot make Ruku' or Sujud pray?

A: Standing is not obligatory in that situation. It is best for him to pray sitting and by indications. If he stands and indicates then it is also permissible.

Question 247) If someone was healthy and praying his Salah standing, then he became sick, how should he complete his Salah?

A: He should sit and make Ruku' and Sujud. If he cannot make Ruku' and Sujud he must make them by indication. If he cannot sit then he must lie down and indicate.

Question 248) If someone was praying whilst sitting due to sickness and made Ruku' and Sujud, then became healthy during the Salah, does he begin his Salah anew?

A: No, he continues and stands.

Question 249) If he prayed part of the Salah with indications and then became able to make Ruku' and Sujud, must he continue the Salah?

A: He may not continue. He must begin anew.

Question 250) What is the ruling of Salah missed due to unconsciousness?

A: He who is unconscious for five or less Salah must pray them when he gains consciousness. When he misses more than that, he does not pray it.

Salah of the Musafir [Traveller]

Question 251) Are there separate laws in Shari'ah pertaining to travellers?

A: Yes, there are separate laws mentioned in the relevant chapters of the books of Fiqh.

Question 252) Explain those laws relating to Salah.⁶⁹

⁶⁹ *Al-Hidayah*: The journey in which laws change is that in which a man intends covering the distance covered by camel and foot in three days. The journey mentioned is moderate. According to Imaam Abu Hanifa رحمته الله travelling stations are considered as this is close to the first definition. Farsakh [measure of distance] is not considered. That is correct.

Al-Kifayah: The statement, "The journey in which laws change..." is with regards Qasr of Salah, permission not to fast, extending the wiping of Khuff to three days, the dropping of the obligation of Jumu'ah. The journey in which laws change 'Ids, and Ud-hiyah. The journey in which laws change and the prohibition of a free woman travelling without a Mahram.

Ibn 'Abidin ash-Shami (527/1): The statement, "That is correct..." is to exclude the view of the general Mashaikh that the journey is deemed in measured distance. They differ in the amount. Some say 21 Farsakh. Some say 18. Some say 15. The Fatwa is on the second because it is moderate. *Al-Mujtaba* mentions the Fatwa of the 'Ulama of Khwarizm to be on the third.

He then comments of the statement in *ad-Durr*, "even if he hastens and covers that distance in two days" it is apparent that similarly if he reaches there in a short time through a miracle. *Al-Fath* however disqualifies that due to lack of difficulty which is a cause for Qasr.

I say that not everyone travelled in the past on foot or camelback. In our era, the general masses are free from having to travel like that. If a man could swiftly traverse a distance in the past with a horse, or in our era by plane or car, how then can the journey be fixed on the distance of travelling three days by foot and camel? In addition, the Fuqaha have mentioned that when

At-Tashīl ad-Darūrī (Part 1)

A: When he intends travelling the distance covered in three day's travelling by camel or foot and will leave his city or town, he will reduce [Qasr] his four Rak'at Salah i.e. he will only pray two Rak'at for Zhuhr, 'Asr and 'Isha. There is no reduction in Maghrib, Fajr, Witr, Sunan and Nafil.

Question 253) Will he be rewarded for praying four Rak'at when he should have made Qasr?

A: His extra two Rak'at are Makruh. Qasr is emphasised.

Question 254) Although Makruh, if he prayed four Rak'at, has his Fard obligation been fulfilled?

travelling the distance of three days swiftly in two days Salah is shortened. Whoever measures even that distance calls it the distance of three days (as Ibn al-Humam stated in *al-Fath*)

That the Imam ruled according to travelling stations does not exclude those who measure according to distance, especially if the journey of a day is set for a particular distance. Contemporary travellers are in severe need of having a measurement in Farsakh or miles as the case may be. If the Fatwa is given as per the latter 'Ulama (i.e. in Farsakh); then it will be easier and better. If one chooses the compromise distance of 18 Farsakh, then we reach a figure of 48 miles because research shows a Farsakh equals 3 miles. If we convert it into kilometres which is most commonly used these days, we reach a figure of just over 98km. If we give a Fatwa on 15 Farsakh, we reach a Qasr distance of 45 miles or just over 82km. Some 'Ulama regard the distance as about 88km based on 15 Farsakh. Allaah knows best.

Ibnul Humam stated, "If the one who can do the miracle of traversing distances in moments is believed that he traversed the Qasr distances in moments Qasr will be necessary upon him. This far off because the difficulty of journey which is a cause of Qasr is not imagined." However, journey in itself has been declared to be a difficulty, whether there be additional difficulty or not. The degree of difficulty is not considered. The Fuqaha had ruled that the ruling does not change for one who travelled three days distance in two days and for one who travelled it in three days. If that is the ruling then it should not change for a miraculous journey in moments or one who travels fast in a car or plane. Had there been planes in the time of Ibnul Humam he would have had to resort to the example of miracles. Today any pious or sinful man can travel the three days distance in moments. Think about that.

At-Tashīl ad-Darūrī (Part 1)

A: If he prayed four and sat in the second Rak'ah for the duration of Tashshahud then the first two suffice for his Fard and the next two are Nafil.

Question 255) What is the ruling if he did not sit in the second Rak'ah the duration of Tashshahud?

A: The Fard status of the Salah is void and becomes Nafil. He must pray his Fard again.

Question 256) Are there situations where a traveller prays four Rak'at?

A: Yes, if he is following a resident Imam or he has intended to stay at a town for 15 or more days.

Question 257) If he intends staying less than 15 days?

A: He will continue Qasr, not complete [4].

Question 258) A traveller enters a town and does not intend staying 15 days, but says, "I might go tomorrow or the day thereafter." What is the ruling?

A: He will continue Qasr even if it goes on for years.

Question 259) The Muslim army enters the land of the enemy and intends staying 15 days. Do they pray the complete four?

A: They will continue Qasr because their intention is not definite.

Question 260) A traveller leads residents in a four Rak'at Salah. Does he make Qasr?

A: Yes. The residents will complete their four Rak'at when the travelling Imam makes his Salam upon the second Rak'at.

Question 261) Does the travelling Imam make any announcement to the followers?

A: Yes, it is Mustahab for the Imam to announce after Salam, "Complete your Salah for verily we are a travelling people."

Question 262) If a traveller intends staying at Makkah and Mina for fifteen is he a traveller or resident?

A: He is still a traveller because the intention of residence is based on a single habitation.

Question 263) A traveller has returned to his town and did not intend to stay for 15 days. Does he complete or shorten his Salah?

A: He will complete four Rak'at when entering his town, however short the period. There is no condition of having to intend to stay.

Question 264) A man was born in a town and lived there for years. He then made another place his hometown. He then enters the first town for some need. Does he complete or shorten his Salah?

A: He will make Qasr if the first town is the distance of three days journey or more from his new town. The Nabi ﷺ made Hijrah from Makkah to al-Madinah and made Qasr when he went to Makkah.

Question 265) A traveller missed a Salah and upon entering his town wishes to pray it; or a resident missed a Salah and now wishes to pray it while on travel. What do they do?

A: The principle behind it is that Qada [compensation Salah] is like Ada [original]. One who missed a Salah in travel makes it up as two Rak'at even when already at home. A Salah missed at home is fulfilled as four even when done during travel.

Question 266) Is Qasr for an obedient traveller only or for sinners as well?

A: Both.

Question 267) In this era people travel by car and plane and do not feel difficulty in it. Do they make Qasr despite that?

A: If they leave their hometowns intending a journey of three days distance then they will make Qasr. The journey in itself is in place of the difficulty of journey.

Question 268) Is a traveller allowed to join between two Salah, such as Zhuhr and 'Asr and Maghrib and 'Isha?

A: It is allowed in practice when the two times join, but not in each others' times. Allaah says, "Verily Salah is prescribed upon the believers at set times."

Question 269) What do you mean it is allowed in practice but not in each other's times?

A: A joining in practice is to delay Zhuhr and hasten 'Asr. Zhuhr is prayed right at the end of its Waqt and 'Asr right at the beginning of its Waqt. Similarly Maghrib is prayed at the end of its Waqt and 'Isha at its beginning. This is joining in practice and is called "Jam' Suwari" [Joining in Form] in the terminology of the Fuqaha. According to us a Salah in the time of the other is not allowed, whether delaying or bringing ahead. That is joining in a Waqt which the Fuqaha call, "Jam' Haqiqi" [Real Joining].

Salatul Jumu'ah

Question 270) What is the ruling of Salatul Jumu'ah?

A: It is Fard 'Ayn [obligatory on each individual] on male who is free, mature, intelligent, and healthy, can see and is resident.

Question 271) Are there conditions to establish it?

A: Yes, they are as follows:

1. That it be in a city or the prayer grounds of a city. It is not allowed in villages.
2. That the Sultan or one whom he orders establishes it. Or that the Muslims agree on it and appoint an Imam to lead them in Jumu'ah.⁷⁰
3. It has to be in the Waqt of Zhuhr. It is not valid before or after that.

⁷⁰ *Al-Quduri* only said, "That the Sultan or one whom he orders establishes it." I added, "Or that the Muslims agree on it and appoint an Imam to lead them in Jumu'ah." *Al-Fatawa al-Hindiyyah* quotes *Ma 'arijud Dirayah*, "In lands where the rulers are Kuffar the Muslims may establish Jumu'ah, and a judge may be appointed with their consent. It is Wajib upon them to seek a Muslim ruler." (146/1 – Egyptian Edition)

Ibn 'Abidin ash-Shami has also quoted it like that from *Ma 'arijud Dirayah* in *Raddul Muhtar* (540/1)

4. A Khutbah [lecture] before the Salah. According to Imaam Abu Hanifa رحمته الله a concise mention of Allaah will suffice. According to the other two Imams a lengthy discourse which can be called a lecture is necessary.

5. A congregation. The minimum according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله is three, excluding the Imam. Imaam Abu Yusuf رحمته الله said that the minimum is two excluding the Imam.⁷¹

Question 272) List those reasons which excuse one from attending Jumu'ah?

They are as follows:

1. One who travelled the distance of Qasr.
2. Women are excused.
3. Sickness.
4. Blindness.
5. One is a slave.
6. It is thus not obligatory upon a traveller, woman, ill, blind or slave.

⁷¹ Neither *al-Quduri* nor *al-Hidayah* mentions general permission to attend as a condition for the validity for Jumu'ah. It is however mentioned in the books of the Ahnaf. It means that the doors of the Masjid should be open and all people allowed to enter. If a group enters and then locks the doors upon themselves, then it is not valid as per *al-Fatawa al-Hindiyah* quoting *al-Muhit*. Ash-Shami mentions in his commentary on *ad-Durr al-Muhtar*, "This condition is not mentioned in the *Zahhirur Riwayah* nor in *al-Hidayah*. It is mentioned in *an-Nawadir*. *Al-Kanz*, *al-Wiqayah*, *an-Niqayah*, *al-Multaqi* and other reliable texts rule according to it."

I say, "Even if this condition is only found in the *Nawadir*, it is nevertheless practiced in the general Masajid of the Muslims. They are kept open for all who desire to pray Jumu'ah. However, in army camps, personnel are called by Azan for Jumu'ah but outsiders are prohibited from entering. General permission is restricted. The latter Fuqaha like Ibn 'Abidin have found a solution to this problem, when he says in the end of the discussion, "The problem only arises if the Jumu'ah is only established in a single place. If there are several places then there is no problem." *Raddul Muhtar* (546/1)

It is appropriate that Fatwa be given that their Jumu'ah is valid because general permission is not mentioned in the *Zahhirur Riwayah*, and the Salah is prayed in cities in many places. Allaah knows best.

Question 273) If these people attend Jumu'ah have they fulfilled the Fard of that Waqt?

A: Yes.

Question 274) Is the Salah of the Imam and followers valid if a slave, sick man, traveller or blind man leads freemen, healthy men and residents for Jumu'ah?

A: Yes, it is allowed and the Jumu'ah is valid.

Question 275) What should one who has missed Jumu'ah for a reason do?

A: He should pray Zhuhr as should one who did not attend Jumu'ah without a valid reason. If he did not have a valid reason he has sinned.

Question 276) Is it allowed to pray Zhuhr at home without any reason, before the Imam prays Jumu'ah?

A: He has committed a sin.

Question 277) If he did that anyway and the Waqt of Zhuhr passes, has his Salah fulfilled the Fard of that Waqt?

A: Yes.

Question 278) What is the ruling if he goes to join the Imam for Jumu'ah after having prayed his own Zhuhr?

A: The Jumu'ah is valid. According to Imaam Abu Hanifa رحمته الله the Zhuhr is void as soon as he sets off for Jumu'ah. According to his two companions it is void when he joins the Imam is the Salah of Jumu'ah.

Question 279) Should those who are excused and prisoners pray Zhuhr in congregation on the Day of Jumu'ah?

A: It is Makruh. They should pray individually.

Question 280) What should one who has missed a Rak'ah of Jumu'ah do?

A: Continue and then pray what was missed.

Question 281) What should he do if he gains the Salah when the Imam is in Tashshahud or Sujodus Sahw?

A: He should continue the missed Rak'at of Jumu'ah according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله. According to Imaam Muhammed رحمته الله, if he attained most of the second Rak'ah, he should continue with Jumu'ah. If less, then he will continue with Zhuhr i.e. he will pray four Rak'at with that Tahrimah.

Question 282) What is the ruling of buying and selling after the Azan of Jumu'ah?

A: "When the call is made for the Salah of Jumu'ah then hasten to the remembrance of Allaah and leave off trade." [Quran]

Question 283) What is the ruling of Salah and talking after the Imam emerges?

A: When the Imam emerges, the people should not pray Salah or talk until he completes his Khutbah according to Imaam Abu Hanifa رحمته الله. According to his two companions there is no harm in talking as long as he did not begin the Khutbah.

Question 284) How many times is Azan called for Jumu'ah?

A: Twice:

1. When the sun drops from its zenith then they should turn their attention to Jumu'ah. They must leave trade and hasten to the remembrance of Allaah.
2. When the Imam ascends the Mimbar [pulpit] and sits on it. Azan is then called in front of him. The Imam then gives two Khutbah after which the Salah commences.

Question 285) Describe the Sunnah Khutbah.

A: The Imam will stand and give two Khutbahs, sitting a while in between the two.

Question 226) Does the Imam read a loud or soft Qira-ah during Jumu'ah?

A: Loud.

Question 227) What is the ruling of listening carefully to the Khutbah if one is far?

A: The far one is like the near one. Listening carefully and maintaining silence is Wajib whether one is near or far, whether one can hear the Imam or not.

Salah of the Two 'Id

Question 288) What is the status of the Salah of the two 'Id?

A: It is Wajib upon whomever Jumu'ah is Wajib upon.

Question 289) What are the beginning and end times for it?

A: The beginning time is when Salah becomes permissible when the sun is high enough. The end time is when the sun drops from its high point. It is Mustahab to hasten the Salah on 'Idul Adha because the sacrifices follow the Salah. It is Mustahab to delay it on 'Idul Fitr.

Question 290) What are the Sunan of the two days of 'Id?

A: It is Mustahab on the two days to use Miswak, make Ghusl, apply fragrance and wear one's best clothes. On the Day of Fitr eat an odd number of dates or something sweet and pay the Sadaqatul Fitr before going to the Musalla. On the Day of Adha delay eating until the return from the Musalla when Udhiyah is made and eat from it.

Question 291) Is Takbir proclaimed on the way when going to the Salah of the two 'Id?

A: Takbir is recited loudly on the way to the Musalla on the Day of Adha according to our three Imams. On the Day of Fitr Takbir is recited according to the two besides Imaam Abu Hanifa رحمته الله.⁷²

⁷² That is according to al-Quduri. According to *al-Fatawa al-Hindiyah* Takbir is recited loudly on the way on al-Adha and stops when one reaches the Musalla. On the Day of Fitr the preferred view is that it is not recited loudly. It is Mustahab to recite softly as per *al-Jawharah an-Nayirah* (150/1). This

Question 292) Is there a known Sunnah regarding going to the Musalla?

A: It is Mustahab when going for either 'Id Salah to take one route and to return on another.

Question 293) Can one pray Nafil in the Musalla before Salatul 'Id?

A: No Nafil is prayed in the Musalla before 'Id Salah or afterwards

Question 294) Describe the method of 'Id Salah.

A: The Imam and the people will come out of their habitations to the outskirts of the city. The Imam will lead the people in two Rak'at. He will commence with Takbiratul Ihram, then Thana, then three loud Takbir, raising his hands with each Takbir. He will then recite Ta'awuz and Bismillah softly. He will then recite al-Fatihah and a Surah loudly. He will then complete the remainder of the Rak'ah like any other Rak'ah. He will rise for the second Rak'ah, recite Bismillah softly and al-Fatihah and a Surah loudly. After the Qira-ah he will loudly recite Takbir thrice, raising the hands each time. He will then recite Takbir for a fourth time to go into Ruku'. He will not raise his hands this fourth time. The Rak'ah will then be completed as in any other Salah. He will make Salam after Tashshahud, Salah 'alan Nabi ﷺ and du'a.

Question 295) Are the hands left hanging at the sides or placed below the navel between the extra Takbirs?

A: They are left hanging after all extra Takbirs except for the third Takbir in the first Rak'ah after which he will place his hands under the navel.

Question 296) Those are the actions of the Imam. What do the followers do?

A: The followers will imitate him in all acts except three things which they do not do – Ta'awwuz, Bismillah and Qira-ah. They will not make Takbir loudly but softly.

shows that the difference regarding Takbir on Fitr is regarding method and not the Takbir itself. See Ibn 'Abidin's commentary on *ad-Durr al-Mukhtar* (558/1).

Question 297) Is there Khutbah in the Salah of the two 'Ids?

A: Yes, two Khutbahs in each Salah is Sunnah. The Imam will deliver the Khutbah, teaching the people the laws of 'Id such as Sadaqatul Fitr in the Khutbah of 'Idul Fitr; and the laws of Udhiyah and Takbir of Tashriq in the Khutbah of al-Adha.

Question 298) What is the status of the Khutbahs of the two 'Ids?

A: They are Sunnah and are delivered after Salah.

Question 299) What is the ruling for those present to listen carefully?

A: Listening carefully and keeping silent is Wajib in every Khutbah, be it that of Jumu'ah or 'Id.

Question 300) A man was delayed and missed the 'Id Salah. Does he pray it afterwards [Qada]?

A: There is no Qada of 'Id Salah.

Question 301) If the new moon was covered by clouds and the Imam received testimony of the moon's sighting after Zawal, when will 'Id Salah be prayed?

A: The next day.

Question 302) When will it be prayed if something prevents the people from praying it the next day?

A: It will not be prayed after the second day.

Question 303) When will the Salah be prayed if some obstacle arises on the Day of al-Adha?

A: It will be prayed the next day or the day thereafter, but not after that.

Question 304) What is the Takbir of Tashriq?

A: To recite after every Fard Salah⁷³, "Allaahu Akbar! Allaahu Akbar! La ilaha illAllaah. WALLaahu Akbar, Allaahu Akbar, wa lillahlil hamd."

⁷³ There is no harm to recite it after 'Id because it has been the constant practice of the Muslims. To follow them is Wajib. The 'Ulama of Balkh have

Question 305) What are the beginning and final times of this Takbir?

A: It begins after the Fajr of the Day of 'Arafah. The last is after 'Asr of the Day of Nahr. This is according to Imaam Abu Hanifa رحمته الله. According to his two companions it ends after 'Asr of the final day of Tashriq. The Fatwa is according to them.⁷⁴

Question 306) Is this Takbir loud or soft?

A: The Imam and followers will recite aloud, women soft.

Question 307) If the Imam forgets the Takbir of Tashriq, will the follower recite it?

A: Yes.

Question 308) What is the status of this Takbir?

A: It is Wajib upon one who has prayed any of the five Fard or Jumu'ah. It is read immediately after Salam.⁷⁵

Salatul Kusuf [Eclipse Prayer]

Question 309) What are the Muslims commanded to do when the sun eclipses?

A: The Imam will lead the Muslims in two Rak'at without any Azan or Iqamah. It will be prayed in the form of Nafil i.e. 1 Ruku' and 2 Sajdah per Rak'ah. The Imam will lengthen the Qira-ah and then offer du'a until the sun appears.

Question 310) Is the Qira-ah in it loud or soft?

ruled accordingly. [ad-Durr al-Mukhtar]. The meaning of no harm here means it is recommended. [ad-Durr al-Mukhtar (564/1)]

⁷⁴ See *al-Bahr ar-Raiq* (178/3)

⁷⁵ The meaning of immediately is to recite it without such a pause which prevents one from continuing Salah. Thus if he leaves the Masjid, talks deliberately or accidentally, or breaks his Wudu deliberately then the Takbir falls away. There are two views regarding turning one's back to the Qiblah. As for falling into Hadath unintentionally after Salam then the more correct opinion is to read Takbir and not to go and renew Wudu. [Raddul Muhtar (562/1)]

A: According to Imaam Abu Hanifa رحمته الله it is soft and according to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is loud.

Question 311) Which Imam will lead the people in this Salah?

A: The Imam who leads them in Jumu'ah.

Question 312) If the Jumu'ah Imam is not present?

A: The people will pray individually.

Question 313) Is there a Khutbah in this Salah?

A: No.

Question 314) What do the Muslims do when the moon eclipses?

A: Pray individually.

Question 315) Is there any other action besides Salah in the two eclipses?

A: 'Aishah radiyAllaahu 'anha narrated that Rasulullaah ﷺ said, "Verily the sun and the moon are signs from amongst Allaah's signs. They do not eclipse due to the death or life of anyone. When you see that, make du'a to Allaah, Salah and Sadaqah."⁷⁶

Asma radiyAllaahu 'anha narrated, "The Nabi ﷺ commanded that we set slaves free during solar eclipse."⁷⁷

Salatul Istisqa [Drought]

Question 316) What is the meaning of Istisqa?

A: Seeking rain when afflicted by drought.

⁷⁶ Al-Bukhari, Chapter on charity during eclipse.

⁷⁷ Al-Hidayah states, "Rasulullaah ﷺ did it once and did not do it the next time, so it is not Sunnah."

Ash-Shami states in *Raddul Muhtar*, "That is because a Sunnah is what he constantly acted upon. Doing it once and then leaving it means that it is recommended."

I say that negating the Salah in its entirety is to contradict authentic Ahadith. It is therefore appropriate to interpret Imaam Abu Hanifa رحمته الله's words as negation of the emphasis of the Sunnah and not it being Sunnah.

Question 317) What is done in Salatut Istisqa?

A: There is a Shar'i basis for the Salah but it is not Wajib. It is allowed to suffice on du'a and seeking forgiveness. Sometimes Rasullullah ﷺ prayed Istisqa and sometimes he did not pray it, but made du'a for rain whilst on the Mimbar for Jumu'ah. All that is established from him ﷺ.

Question 318) What is the meaning of the words of Imaam Abu Hanifa رحمه الله found in the books of Fiqh, "There is no Sunnah Salah for Istisqa."?

A: It means that Salah is not specified in Istisqa, it is not Sunnah Muakkadah that Istisqa is not valid without the Salah. (e.g. duaa)

Question 319) How will the Imam lead the people in the Salah?

A: The Imam and the people will walk to the outskirts of the city with humility. They will display meekness to Allaah and lower their heads. The Imam will pray two Rak'at with loud Qira-ah. He will face the people and deliver two Khutbahs. He will invert his cloak during the Khutbah. He will make the top bottom and the bottom on top. He will bring the right edge to his left shoulder and vice-versa. The people will not invert their cloaks. He will then face the Qiblah after the Khutbah and engage in du'a. The people will sit facing the Qiblah, making du'a, seeking forgiveness and repenting. It is appropriate that Istisqa be made with the presence of the weak ones, old men, old ladies and children.

Question 320) Is there any other act besides what you have mentioned?

A: Yes, they should give charity before going to the Salah.

Salah of Ramadan

Question 321) Is there an extra Salah in the month of Ramadan besides the Fard and usual Sunan?

A: Rasullullah ﷺ said, "He who keeps the fast of Ramadan with Iman and hoping for reward has his past sins forgiven. He who stands in worship in Ramadan with Iman and hoping for reward has his passed sins forgiven." [al-Bukhari and Muslim] It is obvious from the

Hadith that there is a Salah in the nights of Ramadan, over and above that which is prayed in the other nights.

Question 322) How is this Salah prayed in the nights of Ramadan?

A: The Imam leads the people in 20 Rak'at after 'Isha. He will make Salah upon every two Rak'at with a total of 5 rests in between.

Question 323) What is the meaning of 5 rests?

A: A rest [Tarwihah] after every 4 Rak'at. That is why it is called Salatut Tarawih. The Imam will rest with the people the duration of the 4 Rak'at.

Question 324) Is this Salah Sunnah for women as well?

A: Yes, it is Sunnah Muakkadah for men and women. The men will pray in congregation in the Masajid and for women their homes are best.

Question 325) What is the status of congregation for men in Tarawih?

A: It is Sunnah Muakkadah with Kifayah [collective] status. If all the people of the Masjid abandon it they have sinned.

Question 326) Is Witr prayed in congregation during Ramadan?

A: Yes, after the five rests, the Imam will lead them in Witr in congregation. He will read the Qira-ah aloud in all five Rak'at. He and the followers will read the Qunut softly.

Question 327) Is Witr prayed in congregation out of Ramadan?

A: No.

Salatul Khawf *[Congregation Prayer during fear]*

Question 328) How will the Imam lead the people when the enemy is attacking and there is much fear?

At-Tashil ad-Daruri (Part 1)

A: The Imam will divide the people in two groups. One group to confront the enemy, and the other to pray behind him. He will pray a complete Rak'ah with that group. When he raises his head from the second Sajdah, that group will go face the enemy. The next group will come and the Imam will lead them in a Rak'ah. He will make Tashshahud and Salam but they will not make Salam. Upon his Salam they will go to face the enemy while the first group will complete their second Rak'ah without Qira-ah. They will make Tashshahud and Salam. They will go back to the enemy. The second group while come, and pray their remaining Rak'ah with Qira-ah. They will make Tashshahud and Salam.

Question 329) What will the Imam do if he is resident?

A: He will pray the four Rak'at Fard, two Rak'at with each group.

Question 330) How will he pray Maghrib with them?

A: He will pray two Rak'at with the first group and one with the second.

Question 331) If the fear is so intense that they cannot meet for congregation nor can they dismount?

A: They will pray individually on their mounts, doing Ruku' and Sujud by indication.

Question 332) If they are unable to face Qiblah?

A: They should pray wherever they can.

Question 333) If some of them are dismounted on the ground, how should they pray?

A: They will pray without walking and must fulfil the Ruku' and Sujud. If they are unable to fulfil them then they should do so by indication.⁷²

Question 334) If they were forced to start fighting while they were engaged in Salah, what is the status of the Salah?

⁷² "The infantryman will indicate when he is unable to make Ruku' or Sujud. [al-Fatawa al-Hindiyyah (156/1)]

At-Tashil ad-Daruri (Part 1)

A: If they fought or walked, it is void because of many actions.

Question 335) What should they do if the enemy attacks and they are unable to perform Salah with Ruku' or Sujud, not even by indication, whether individually or following the Imam?

A: They should delay the Salah as Rasulullaah ﷺ did at the Battle of Khandaq,⁷³ and pray it when they can even if Qada.

Salah in the Ka'bah

Question 336) Allaah has made the Ka'bah the Qiblah which the Muslims must face in Salah. Is Salah valid if prayed inside it?

A: Yes, both Fard and Nafil will be valid.

Question 337) If the Imam prays in the Ka'bah and a follower's back faces the back of the Imam, is his Salah valid?

A: Yes.

Question 338) And if a follower has his face to the face of the Imam?

A: It is valid but Makruh.

Question 339) And one whose back faces the Imam's face?

A: His Salah is not valid because he stood in front of the Imam.

Question 340) When the Imam stands outside the Ka'bah in al-Masjid al-Haram and the people circle the Ka'bah and follow him, is their Salah valid?

A: Yes.

Question 341) Is that a general rule or are certain followers excluded?

⁷³ Al-Bukhari narrates just before the Book of Azan that Jabir bin 'Abdillah ~~رضي الله عنه~~ narrates that 'Umar bin al-Khattab came after sunset and cursed the Kuffar of the Quraysh. He said, "O Rasulullaah, I was only able to pray 'Asr when the sun was about to set." Rasulullaah ﷺ said, "By Allaah, I was unable to pray it." We then went to Bat-han. He made Wudu for Salah and we did likewise. He prayed 'Asr after sunset and then prayed Maghrib.

A: The follower who is closer to the Ka 'bah on the side that the Imam is facing is excluded. His following is incorrect for being ahead of the Imam. The Salah is valid of one who is closer to the Ka'bah than the Imam if he is at a side different to the Imam's.

Question 342) Is Salah on the roof of the Ka'bah valid?

A: It is valid but Makruh for not showing honour to the Ka'bah.

Funeral Laws

Question 343) What should those who are present by someone who is dying do?

A: When someone is about to die, he should be laid to on his right side and face the Qiblah. He should be encouraged to recite the Shahadatayn. When he dies his jaws should be tied and his eyes closed. The laws of a woman are like that as well.

Ghusl

Question 344) How is a corpse washed?

A: The corpse should be laid on a platform perfumed an odd number of times⁸⁰. A cloth should be placed over his private region and his clothing removed. Wudu is then made for him, excluding washing his mouth and nose. His head and beard is washed with Khitmi.⁸¹ He will then be laid on his left side. He will be washed until it is seen that the water reaches the platform beneath him. [Then do the same with the corpse on the right side]. The washer will then make him

⁸⁰ The corpse should be laid on a platform perfumed an odd number of times, up to a maximum of seven times just like when he is put in coffin cloth and when he dies, i.e. on three occasions. [ad-Durr al-Mukhtar]

Ash-Shami said, "That the perfume should be taken around the platform one, thrice, five times or seven times, nothing more. This is in *al-Fath*, *al-Kafi* and *an-Nihayah*. *At-Tabayin* sets the maximum at five. 'On three...' means that the corpse is perfumed on three occasions i.e. when the soul departs to remove the bad odour; when he is washed; and when he is dressed..." (574/1)

⁸¹ A plant with a pleasant aroma.

sit and lean against him. He will gently wipe the stomach. If something comes out of the corpse he will wash it there. He will not repeat the full Ghusl. He will then let the corpse lie on its left side and wash it, pouring camphor water over it. That is the third and final wash.

Question 345) Is anything besides water used for cleaning?

A: Yes, the water can be boiled with lotus or potash and used to wash the corpse. Soap is also allowed.

Question 346) If these things are not available?

A: Then with plain water.

Shrouding [kafan]

Question 347) Explain the number of Kafan [shrouds] and method of shrouding for men and women.

A: There are details in this matter as follows:

1. The Sunnah Kafan of a man is Izar [lower cloth]; Qamis ["shirt"] and lifafah [covering]. The minimum is Izar and lifafah. Under necessity, whatever can be found. To only use one cloth without an excuse is Makruh.
2. The Izar is from head to feet. The lifafah is the same. The Qamis is from below the neck to the feet without pockets, attachments or sleeves.
3. The shrouds are perfumed in odd numbers. The lifafah is laid out, then the Izar over it. After drying the corpse so that it does not wet the shrouds, it is placed on the Izar. Hanut perfume is applied to his head and beard. Camphor is applied to his places of Sajdah i.e. forehead, nose, palms, knees and feet. He is first dressed in the Qamis⁸². Then the Izar is folded over the corpse from his left side then from his right hand side. The same is then done with the lifafah. The right folds must be over the left folds.
4. If it is feared that the shrouds will open, the sides may be tied with something.

⁸² Spread half the Qamis on the Izar and fold the other half, leaving the head side free. When the corpse is put on the Izar enter his head into the cut out part of the Qamis. Then spread out the top half over the corpse.

At-Tashīl ad-Darūrī (Part 1)

5. The Sunnah kafan of a woman is a Dir' ["armour"], izar, khimar ["headscarf"], lifafah and khirqah ["cloth"]. The khirqah is used to tie her breasts and Dir' refers to Qamis. The minimum kafan is izar, lifafah and khimar. Under necessity, whatever can be found. To use two cloths without an excuse is Makruh.

6. The khirqah should reach from the breasts to the thighs.

7. The khimar should be 3 arm spans long.

8. The shrouds are perfumed in odd numbers. The lifafah is laid out, then the izar over it. The corpse is placed on the izar. The dir' is put on. Her hair is made into two plaits and are placed over the dir' on her breasts. The khimar is then put over that.⁸³ The khirqah is then tied⁸⁴ above the Qamis. The izar is then folded then the lifafah. The sides of the shroud can be tied if it is feared that it will open.

Question 348) Is the corpse's hair combed?

A: Neither the hair nor beard is combed; nor the nails clipped; nor the hair cut.

Funeral Salah

Question 349) Describe the Salah for the dead.

A: The imam will stand in line with the corpse's chest. The people will stand behind him and try to form three rows.⁸⁵ The Imam and the followers will proclaim Takbir and recite Thana and Allaah's praises. If they wish they may recite, "SubhanakAllaahumma ..." until the end. After a second Takbir, Salat 'alan Nabi ﷺ is recited. After a third

⁸³ The khimar is put over her head and plaits from two sides is placed over her chest above the Dir'.

⁸⁴ According to some Fuqaha the khirqah is tied after the other shrouds. We prefer what is in *al-Ikhtiyar* because it is supported by Ahadith. [See I'laus Sunan (205/8)]

⁸⁵ Malik bin Hubayrah رضي الله عنه narrates: I heard Rasulullaah ﷺ say, "There is no Muslim who dies and three rows of Muslims pray upon him except that [Jannah] becomes compulsory." Because of this Hadith Malik would form the people into three rows when they were few at a funeral. [Abu Dawud]

At-Tashīl ad-Darūrī (Part 1)

Takbir du'a is made for the deceased and the Muslim, living and dead. After a fourth Takbir, Salam is made.⁸⁶

Question 350) What du'a is read for a child's funeral?

A: Allaahummaj 'alhu lana farataw wa ajra

Question 351) Will they raise their hands for the Takbir of Janazah Salah?

A: No, only for the first Takbir.

Question 352) Is Jama'ah a condition for praying this Salah?

A: No. even if a single man or woman prays it, the Fard Kifayah is fulfilled.

Question 353) What are the conditions and Fard of the Salah?

A: Conditions include being free of al-Hadath al-Akbar and al-Asghar. The clothing and place must be clean. The deceased must have been purified and placed before the Musallis. There are two Fard: Qiyam and four Takbir. Everything besides that is Sunnah.

Question 354) Can the Funeral Prayer be held in a Masjid built for five time's Salah?

A: It is Makruh. The Nabi ﷺ would pray it outside of the Masjid where the deceased would be placed.⁸⁷

⁸⁶ Abu Bakr bin Abi Shaybah narrates from Hafs bin Ghiyath who narrates from Ash'ath who narrates from ash-Shu'ba that after the first Takbir Hamd and Thana is recited, Salat 'alan Nabi ﷺ after the second, du'a after the third and Salam after the fourth.

In India and Pakistan the du'a narrated by at-Tirmizi is most frequently recited, "Allamaghfir lihayyina wa mayyitina ..."

⁸⁷ Al-Bukhari narrates from Abu Hurayrah رضي الله عنه that Rasulullaah ﷺ announced the death of the Negus on the day that he died. He went with the Muslims to the Musalla, formed them into rows and recited four Takbir upon him.

'Abdullaah bin 'Umar رضي الله عنه narrates that the Jews brought to Rasulullaah ﷺ a man and woman from them who had committed Zina. He ordered their

Question 355) Who is most entitled to lead the Salah?

A: The most entitled is the Muslim ruler if he is present, if not then the Imam of the district, if not then the guardian.

Question 356) If someone besides the ruler or the Imam prayed it, is the guardian allowed to repeat the Salah?

A: Yes.

Question 357) If the guardian has prayed the Salah, may anyone else repeat it?

A: No.

Question 358) What is the ruling if the deceased was buried without Salat al Janazah?

A: It may be prayed at his grave for up to three days, and not thereafter.

Carrying and Burial

Question 359) How should the men carry the corpse and how should they walk?

execution. They were stoned near the place Funeral Prayers were held at the Masjid.

The first Hadith clarifies that he went out to the Musalla to pray, even though the corpse was not present. The second Hadith states that Funerals were at the Masjid.

Muhammed bin 'Abdillah bin Jahsh رضي الله عنه narrates, "We were sitting in the courtyard of the Masjid where Funerals were held. Rasulullaah ﷺ was sitting amongst us ..." This Hadith of Ahmad clarifies that the place of Funerals was in the courtyard of the Masjid.

Ibnul Humam states in *Fathul Qadir*, "And then there is the narration in *Muslim* that when Sa'd bin Abi Waqqas رضي الله عنه died, 'Aishah radiyAllaahu 'anha said, 'Bring him into the Masjid so that I may pray upon him.' They refused her and she said, 'By Allaah, the Nabi ﷺ prayed over the two sons of Bayda in the Masjid – Sahl and his brother.

We say that narrating an incident does not mean that that was the general situation. That may have been due to a necessity that Rasulullaah ﷺ was in l'tikaf. Even if we accept the lack of the emergency, the refusal of the Sahabah and the Tabi'un is proof that he avoided that thereafter."

A: They should take the four legs of the bier. They should walk with speed without shaking. One who wishes to carry the bier in such a way that the corpse's right shoulder will be on his right shoulder, then move back so that the right back portion is on his right shoulder, then the front left shoulder on his left shoulder then move back so that the back left portion is on his left shoulder.

Question 360) Can the people sit in the graveyard?

A: Yes, although it is Makruh to sit before lifting the bier from the men's necks.

Question 361) How should the grave be?

A: The grave should be dug to half a man's height or till the chest. If dug deeper then it is good. It is preferred then that the Lahd type then be dug. If the earth is soft they choose the Shiqq method then it too is allowed.

Question 362) How is the corpse entered into the grave?

A: From the Qiblah side. The one who places it in the grave will recite, "Bismillah wa billah wa 'ala millati Rasulillah ﷺ"⁸⁸ He will make it face the Qiblah, lying on its right side. The knots tied to prevent the shroud from opening will be untied. The Lahd will be closed with level unbaked bricks and then covered with soil.

Question 363) If baked bricks, wood or reed is used to level and close the Lahd?

A: Baked bricks and wood is Makruh, reed is no problem.

Question 364) How should the grave be competed after the sand was placed on it?

A: The grave should be like a camel's hump,⁸⁹ not level. It should not be higher than a hand span.

⁸⁸ At-Tirmizi narrates from Ibn 'Umar رضي الله عنه that Rasulullaah ﷺ used to recite that when he entered the corpse into the grave. The narrator also said, "Bismillah wa billah wa 'ala sunnati Rasulillah."

⁸⁹ *Al-Bahr*, "Whoever saw the grave of the Nabi ﷺ said that it was like camel's hump."

Question 365) What is the ruling on making the grave firm with lime or cement?

A: These are sins which Rasoolullaah ﷺ forbade.

Question 366) Is Salah read on a baby who was born, cried and died?

A: A baby which cried after birth or showed any sign of life is named, washed and his funeral is held.

Question 367) If he neither cried nor showed any sign of life?

A: He will be wrapped in a khirqah and buried without Salah.

The laws of a martyr

Question 368) Is there a difference in the laws of a martyr?

A: Yes, some laws differ.

Question 369) Describe those laws.

A: A Muslim has been slain by Kuffar; or is found in the battlefield with wounds from which he died; or has been oppressively killed by other Muslims in a situation where Diya [bloodmoney] is not Wajib; then he will be shrouded and prayed upon without Ghusl.

Question 370) If the martyr died while Junub will he be given Ghusl or not?

A: Al-Imam Abu Hanifa رحمه الله said that he will be washed and his two companions said that he will not be washed. They disagree in the same way about a child martyr. Imaam Abu Hanifa رحمه الله said that he will be washed and they said that he will not be washed.

Question 371) We know that a martyr is not washed like other dead, but is his blood washed and his clothing removed?

A: The blood is not washed and his clothing is not removed except for his fur, outer garments, leather socks and weapons are removed.

Question 372) Someone has been wounded in the battlefield. He then eats, drinks or is treated. He then dies. Is he regarded as a martyr?

A: If Allaah wills he will receive a martyr's reward and is a martyr in the Sight of Allaah. As for the laws amongst humans, he is not regarded as a martyr who is not washed. The eating, drinking and medication is termed as *irtithath*.

Question 373) What is the ruling of one who is wounded on the battlefield and remains alive and the Waqt of Salah passes while he retains his senses; or he is carried alive from the battlefield?

A: This is also *irtithath*. He will be washed like a normal deceased.

Question 374) What is the ruling of one killed in hadd [prescribed Islaamic punishment] or Qisas [retaliation]?

A: He will receive Ghusl and Salah.

Question 375) Is Salah performed upon rebels and highway robbers?

A: No.

Kitabuz Zakah [Obligatory Charity]

Question 376) What is the meaning of Zakah linguistically and Islaamically?

A: Linguistically Zakah is purification and increase.⁹⁰ In Shari'ah it is the decree of Allaah the Lawgiver, that the owner of a set amount makes a poor Muslim owner of a set portion of his wealth for the sake of Allaah, in a way that the first owner terminates his benefits of ownership in all aspects.

Question 377) What is the status of Zakah in Islaam?

A: It is a Fard amongst that which Allaah has made Fard. It is a Pillar of Islaam.⁹¹ Allaah has commanded it in His Book, "And establish

⁹⁰ It is thus called Zakah because it purifies one's wealth. It is also said that through it wealth increases. [al-Bahr ar-Raiq (216/2)]

⁹¹ Most Fuqaha list Zakah before Fasting in following the sequence in the Quran and because it is the most virtuous act of worship after Salah. Allaah

Salah and give Zakah." He who denies it being Fard is a Kafir and has left the pale of Islaam.

Upon whom Zakah is Fard

Question 378) Upon whom is Zakah Fard?

A: It is Fard upon a free, mature, intelligent Muslim who owns the complete requisite amount in complete ownership upon which a year has passed.

Question 379) What is the complete requisite amount [Nisab]?

A: It is to own 200 Dirham of silver; or 20 Mithqal of gold; or the equivalent of either amount in the prevalent currency; or a trader owning trade goods to the value of either amount.

Question 380) A man has the requisite amount but is indebted. Is Zakah Fard upon him?

A: Subtract the debt from his wealth. If the remainder equals or exceeds the Nisab then Zakah is payable on the remainder.

Question 381) Is there Zakah on trade goods?

A: Yes, if it is worth either 200 Dirham or 20 Mithqal of gold.

Question 382) What do you mean, "if a year passes"?

A: If a free mature Muslim owns the Nisab or more, then he has to pay Zakah on it if he has owned it for a complete lunar year. The Solar year is not reckoned.⁹²

Question 383) What do you say about residential buildings, the clothes worn on the body and furniture of the house?

A: There is no Zakah on these as well as one's transport, slaves used for service and weapons which are used.

has linked Zakah with Salah 32 times in His Honourable Book. [Raddul Muhtar]

⁹² Every year on the date the Zakah first became Wajib.

Question 384) If these items are for trading then is there Zakah?

A: Yes, if they reach the Nisab.

Question 385) Is it permissible to give the price in Zakah if the Zakah was payable on gold, silver or goods?

A: Yes, giving the value of Zakah is allowed.

Question 386) What is the ruling of someone who gave all his wealth in charity but did not intend Zakah?

A: The duty of Zakah has been lifted from him.

Question 387) What should someone do if his wealth has been destroyed after Zakah has become Wajib?

A: If all his wealth has been destroyed then the duty of paying Zakah has also been lifted from him. If part of his wealth has been destroyed, then that proportion falls away. That if it was destroyed by others. If he himself destroyed it then Zakah does not fall away.

Zakah of gold and silver

Question 388) Upon what amount of silver is Zakah Fard?

A: When one owns 200 Dirham of silver and a year has passed in possession of it, then Zakah must be paid. He will pay a fortieth of his wealth, which amounts to 5 Dirham out of every 200.

Question 389) If he owns more than 200 Dirham, how does he pay the extra amount?

A: According to Imaam Abu Hanifa رحمته الله there is no extra Zakah until the extra amount reaches 40 Dirham. He will then pay another Dirham on the 40 in addition to the 5 and then again another Dirham for each additional 40 Dirham he might own. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will pay in proportion to whatever exceeds 200, however little or much it may be.

Question 390) Upon what amount of gold is Zakah Fard?

A: When one owns 200 Mithqal⁹³ of gold and a year has passed in possession of it, then Zakah must be paid. He will pay a fortieth of his wealth, which amounts to a half Mithqal. Thereafter for every 4 Mithqal he will pay 2 Qirat. There is no Zakah upon the extra amount less than 4 Mithqal according to Imaam Abu Hanifa رحمته الله. His two companions say that a half Mithqal is due on 20 Mithqal and anything above 20 is calculated proportionally.

Question 391) Is there Zakah upon gold and silver ornaments or vessels?

A: All gold and silver are Zakatable, whether in nugget form, ornament or vessel and whether it is used or not.

Question 392) What is the ruling on gold or silver which is debased with other metal?

A: If the overwhelming composition is silver then it is regarded as silver. If the overwhelming proportion is alloy then it is treated as a gold. The same applies to gold.

Question 393) A man neither has gold nor silver, but government recognised bank notes. Is there Zakah payable?

A: Yes, if the notes reach the value of either Nisab of gold or silver. It is like goods of value. Everything is bought with it and it is used in trade. The government is obliged to imburse one who brings these notes to the bank.

⁹³ *Ad-Durr al-Muktar*: "Nisab of gold is 20 Mithqal and silver 200 Dirham. 10 Dirham weighs 7 Mithqal or Dinar. A dinar equals 20 Qirat. A dirham equals 14 Qirat. A Qirat is 5 barley. The Shar'i Dirham is thus 70 barley, and a Mithqal is 100 barley or 1 and three-sevenths of a Dirham."

As for the new weights, the people of accounting differ. Some say that 20 Mithqal equals 85 grams, others 87g, others 90g. Caution is desirous in the Shar'ah, hence one who owns 85g of gold or its value for a year should pay Zakah. There is a difference on silver as well. Some say 595.1g; or 609.2g; or 612.3g. Caution calls for that here too the least amount be declared the Nisab. So one who owns 595g of silver or its value in the prevalent currency should pay Zakah on it.

Zakah on goods

Question 394) What is the ruling of Zakah on trade goods?

A: Zakah is Wajib on trade goods if the value reaches the Nisab of gold or silver. They will be valued to reach the value of either amount so as to benefit the poor. This is according to Imaam Abu Hanifa رحمته الله. According to Imaam Abu Yusuf رحمته الله they will be valued with whatever is used to buy them. If they are bought with gold, they will be valued with gold. If they are bought with silver, they will be valued with silver. If they are bought with neither gold nor silver they will be valued according to the prevalent city. According to Imaam Muhammed رحمته الله they will be valued according to the prevalent currency in all conditions.

How is Zakah paid on two types of wealth and goods?

Question 395) How is Zakah of wealth paid?

A: The proportion Allaah has decreed, i.e. one-fortieth must be given to those whom it is permissible to be given to with a simultaneous intention to fulfil the Zakah when paying it or a simultaneous intention when setting aside the obligated amount.

Question 396) What is meant by, "simultaneous when setting aside the obligated amount"?

A: When he calculates his wealth at the end of the year, he takes out the amount to be paid in Zakah and makes an intention that every time he finds someone entitled he will spend from it on him. Every time a poor person comes and he gives him from that separated wealth the Zakah is being fulfilled even if he does not bear in mind the intention of Zakah at the time of payment.

Question 397) A man with Nisab gets additional wealth during the year. Is Zakah payable on it?

A: He will add the additional wealth to the same type he owns and calculate the Zakah.⁹⁴

⁹⁴ The clause of the same type means an increase of a different type is not added together e.g. sheep are not added with camels. The increase is general

Question 398) Is it permissible to pay Zakah before the end of his Zakah year?

A: Yes, the Zakah has been rendered.

Question 399) A man possessing Nisab paid his Zakah at the end of the year. During the following year his wealth falls below Nisab. Does he pay Zakah?

A: If he again has Nisab by end of the second year, Zakah is Wajib upon him. Nisab only need be considered at the ends of the years. The drop during the year is of no relevance.

Question 400) A man has trade goods worth less than Nisab. He however also has gold and silver. Does he pay Zakah?

A: If the total value of the gold, silver and goods reaches Nisab, then Zakah is payable.

Question 401) A man has less than 20 Mithqal of gold and less than 200 Dirham of silver. Does he pay Zakah?

A: According to Imaam Abu Hanifa رحمته الله he will add the value of the two, and if the Nisab is reached Zakah is payable. According to his two companions they will not be added according to value, but according to proportion.

Question 402) Please give an example of the above difference of opinion.

A: A man has 100 Dirham of silver and 5 Mithqal of gold worth 100 Dirham. Zakah is Wajib according to Imaam Abu Hanifa رحمته الله but not the other two. The Nisab has been attained according to him by way of value. It has not been attained according to them by way of proportion. On the other hand if the man had 100 Dirham and 10

in source. Thus a gain through inheritance, gift, sale, bequest etc are all added together. The discussion on two different currencies being added together will be discussed shortly. Trade goods will be added to one of the currencies as per their value. This is according to *al-Bahr ar-Raiq* (239/2). Gold, silver and goods are regarded as a single category. An increase in one is added to the rest.

Mithqal worth 100 Dirham, Zakah is payable according to all of them. The Nisab has been reached according to both methods.⁹⁵

Zakah on Sawaim [grazing animals]

Question 403) Is Zakah payable on anything else besides gold, silver and trade goods?

A: Yes, on Sawaim.

Question 404) What are Sawaim?

A: Animals which graze in the fields like camels, goats and cattle. Zakah is only Wajib on them if they suffice on grazing for most of the year. If they have to be fed fodder for at least half the year, then Zakah is not payable.

Question 405) What is Wajib in these categories?

A: Each category has a different amount payable and different Nisab.

Question 406) Is their Zakah on animals used for labour, carrying or are fed fodder at home?

A: No.

Zakah of Camels

Question 407) Explain the amount of Zakah paid on camels.

A: There is no Zakah on less than 5 camels. If there are 5 to 9 which have grazed freely and a year has passed on them then a sheep is payable. Two sheep are payable on 10 – 14 camels. 3 sheep are payable on 15 – 19 camels. 4 sheep are payable on 20 – 24 camels. A camel in its second year is payable on 25 – 35 camels. A camel in its third year is payable on 36 – 45 camels. A camel in its fourth year is

⁹⁵ The 100 Dirham is half Nisab and the 10 Mithqal is half Nisab. If the proportions are added then full Nisab is attained.

payable on 46 – 60 camels. A camel in its fifth year is payable on 61 – 75 camels. 2 camels in their third year is payable on 76 – 90 camels. 2 camels in their fourth year is payable on 91 – 120 camels.

The sequence then begins anew. At the next 5 camels a sheep and 2 camels in their fourth year is payable. At 10, 2 sheep with the camels. At 15, 3 sheep with the camels. At 20, 4 sheep with the camels. At 25, a camel in its second year with the camels. This sequence continues until a total of 150 camels are owned. Upon that, 3 camels in their fourth year are paid.

The sequence then begins anew. At the next 5 camels a sheep and 3 camels in their fourth year is payable. At 10, 2 sheep with the camels. At 15, 3 sheep with the camels. At 20, 4 sheep with the camels. At 25, a camel in its second year with the camels. At 36, a camel in its third year with the camels. This sequence continues until a total of 196 camels are owned. Upon that and until 200, 4 camels in their fourth year are paid.

The sequence begins anew as per the calculations of 50 until after 150.

Question 408) Is any distinction in the amounts made between Arabian camels and cross-breeds?

A: No.

Zakah of Cattle

Question 409) Explain the amount of Zakah payable on cattle.

A: There is no Zakah on less than 30 heads of cattle. If the number reaches 30 cattle which spent most of a year freely grazing and they have been possessed for a full lunar year then Zakah of a calf – male or female – in its second year is payable. For 40 cattle a calf of either sex in its third year is payable. According to Imaam Abu Hanifa رحمته الله an additional calculation is made for an amount above 40 until 60. A fortieth of a third year female calf is due on one above 40; two-fortieths on 2; 3 fortieths on 3. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله there is no extra Zakah on the extra amounts above 40 until 60. When the cattle reach 60 heads⁹⁶ then 2

⁹⁶ There is no difference amongst them on less than 40 and 60 and above.

calves in their second year of either sex are due. On 70 a calf in the third year and a calf in the second year are due. On 80, 2 calves in their third year are due. On 90, 3 second year calves are due. On 100, 2 second years and 1 third year. In this way, in every 10 the Zakah will change between second and third years.

Question 410) How is Zakah on buffaloes calculated?

A: There is no difference between calculation on cattle and buffaloes.⁹⁷

Zakah of Sheep and Goats

Question 411) Explain the amount of Zakah payable on goats.

A: There is no Zakah on less than 40 sheep. If one owns 40 sheep which have freely grazed for most of a year and have owned them for a year, then on 40 – 120 sheep, 1 is due in Zakah. 2 Sheep are due on 121 – 200 sheep. 3 sheep are due on 201 and then 4 sheep are due on 400. Then 1 sheep for every 100.

Question 412) Is there a difference between the Zakah of sheep and goats?

A: No.⁹⁸

Zakah of Horses

Question 413) Is Zakah payable on horses?

⁹⁷ *Al-Bahr ar-Raiq*: The tern Baqar encompasses both cattle and buffalo. They are of the same species. They added together to reach Nisab, Zakah is then Wajib on them. If they are mixed then the Zakah is paid in the form of whichever animal is more. If they are equal then take the least of the best species and the best of the least species." (232/2)

⁹⁸ Ash-Shami stated, "If he has sheep below the Nisab and also has goats that if they are added together then Nisab is reached, the Zakah becomes Wajib. The Nisab will be taken from the respective animal and if it was reached by combining the two then Zakah is taken from whichever is most. If they are equal then from whichever he wants to."

A: If one owns Sawaim horses (whether male or female) for a year then one has a choice – either pay a Dinar for each horse or value them and pay 5 Dirham in every 200 of the value. According to Imaam Abu Hanifa رحمته الله if only stallions are owned then Zakah is not due.⁹⁹

Question 414) Is there a difference regarding Zakah on horses?

A: Yes, Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله disagree with Imaam Abu Hanifa رحمته الله and say that there is no Zakah on horses.

Question 415) Is Zakah payable on mules and donkeys?

A: Only if they are for trade in which case the Zakah payable on trade goods must take them into account.

Sundry Masail

Question 416) What does Imaam Abu Hanifa رحمته الله say about the offspring of camels and cattle?

A: There is no Zakah on the babies of camels, sheep and goats according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله unless they are with adults. It is Wajib according to Imaam Abu Yusuf رحمته الله. [There are further details to his view which can be read in *al-Hidayah*].

Question 417) What does the Zakaat-collector do if he does not find in the herd what must be taken?

A: He will take a lesser animal and more to equal the amount due, or he will take a higher animal and pay the difference back.

Question 418) Should the collector take the best wealth or worst?

A: He should take something in between.

NOTE: It is impermissible in the Zakah of camels to take males, such as a male in its second year except for the purpose of evaluating a female. [*al-Bahr ar-Raiq* (230/2)]

⁹⁹ *Al-Hidayah*: because they do not reproduce. Similarly if there are only mares owned.

Question 419) If the Nisab remains but the non-Zakatable excess has been destroyed, is Zakah calculated on the entire remainder or is it decreased in proportion to the destroyed wealth?

A: The principle according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله is that Zakah is Wajib on the Nisab not the excess. Hence the Wajib is intact according to them. According to Imaam Muhammed رحمته الله and Imaam Zufar رحمته الله the Wajib decreases in proportion to the loss.

Question 420) I do not understand. Please explain by way of an example.

A: Ponder over this example carefully. A man has 9 camels over which a complete year has passed. 4 then were destroyed. He must pay a complete sheep, just as if there had been no excess over 5. The destroyed 4 are overlooked as normal excess in which Zakah is not paid until the camels reach 10. This is according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله.

According to Imaam Muhammed رحمته الله and Imaam Zufar رحمته الله he has to pay 5-ninths of a sheep. They have spread the Wajib across the 9 camels and proportionately decreased the loss over the nine.

A second example: A man has 80 goats of which 40 were destroyed after the year. According to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله a sheep is due on the remainder. According to the others, a half sheep.

If 60 were destroyed then a half is due according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله and a quarter according to the others. [See *Fathul Qadir, al-'Inayah and al-Jawharah an-Nayyirah*]

Zakah of Fruits and Crops [‘Ushr]

Question 421) Is Zakah payable on fruits and crops?

A: Yes, one-tenth or one-twentieth is paid according to the water used?

Question 422) Is there a Nisab in that?

A: Not according to Imaam Abu Hanifa رحمته الله. Zakah is on whatever comes from the earth, whether little or many, except wood, reeds and grass which does not have Zakah according to him. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله there is no Zakah unless something has remaining fruits and it reaches 5 Wasq. There is no Zakah on vegetables according to them.

Question 423) What is a Wasq?

A: A measurement of the people of al-Madinah equal to 60 Sa'.

Question 424) What are the details of the payment of a tenth and half of that?

A: A tenth is due on plants naturally watered e.g. rain. A twentieth is due from plants watered by artificial irrigation such as water-wheels and water-scoops, according to one of the two views.

Question 425) What do Imaam Muhammed رحمته الله and Imaam Abu Yusuf رحمته الله say about crops which are not measured with Wasq such as saffron and cotton?

A: According to Imaam Abu Yusuf رحمته الله if the crop is valued at 5 Wasq of the lowest value crop measured in Wasq then a tenth is due. According to Imaam Muhammed رحمته الله a tenth is due when the crop reaches 5 of its biggest measurements e.g. 5 bales of cotton and 5 Amna [a measurement] of saffron.

Question 426) Is Zakah paid on honey?

A: According to Imaam Abu Hanifa رحمته الله, yes, whether a little or a lot. According to Imaam Abu Yusuf رحمته الله there is no Zakah until it reaches 10 bags, according to Imaam Muhammed رحمته الله 5 Farq.

Question 427) How much is a Farq?

A: 36 'Iraqi Ritl.

Question 428) Is 'Ushr paid on land on which Khiraj is paid?

A: The Khiraj suffices.

Question 429) Are expenses like workers' wages, expenses on cattle etc deductible from the tenth or twentieth?

A: No the Zakah is paid from the entire amount, be it a tenth or twentieth. [*al-Bahr ar-Raiq* (256/2)]

Masraf of Zakah [on whom spent]

Question 430) Upon whom can Zakah be spent?

A: Allaah has explained it in His Honoured Book, "Verily Sadaqah is for the Fuqara, Masakin, the workers on it, whose hearts are to be united, slaves, debtors, in the way of Allaah and travellers." There are thus 8 categories:

1. Fuqara
2. masakin
3. workers on it
4. whose hearts are to be united
5. slaves
6. debtors
7. in Allaah's way
8. travellers

Question 431) Who is a Faqir?

A: He who has minimal possessions which does not reach Nisab.

Question 432) Who is a Miskin?

A: He who does not have anything.

Question 433) What is meant by, "workers on it"?

A: Those whom the ruler sends to collect the Zakah from the Muslims. They go to them and collect, spending their time in that. The ruler will pay them from the Zakah according to their labour.

Question 434) What is the meaning of slaves?

A: To help a Mukatab¹⁰⁰ free himself.

¹⁰⁰ A slave who has a contract with his owner that if he pays the owner a certain amount he will be set free.

Question 435) Who is a debtor?

A: One who is so indebted that he is unable to repay it from his wealth.

Question 436) What is meant by, "in the way of Allaah"?

A: Those who have gone to wage Jihad and have been separated from their groups and are in need of money for expenses.

Question 437) Who is a traveller?

A: A traveller who does not have money on his journey even if he has money at home.

Question 438) Define whose hearts are to be united.

A: They are those whom Rasulullaah ﷺ gave from the wealth of Zakah to, to soften their hearts to enter Islaam. They were leaders of tribes. It was hoped that through them becoming Muslim, their people would accept Islaam. When Islaam gained victory and became independent of them the ruling of giving to them was dropped. They are not given wealth after the time of Rasulullaah ﷺ.¹⁰¹

Question 439) That leaves 7 categories. Must one paying Zakah give each category or will some suffice?

A: He can pay a single person of a single category, or may spread it amongst more.

Question 440) Can Zakah be paid to a Kafir who is Faqir or Miskin?

A: No, even if he is under Muslim rule.

Question 441) Can Zakah funds be used for shrouding or building a Masjid, Madrasah, bridge or public road?

A: No, and if done the Zakah must be paid again. The principle in Zakah is that that one entitled must take ownership of it. There is no taking possession in the examples given.

¹⁰¹ Ibnul Humam said, "They were of three types – Kuffar whom Rasulullaah ﷺ gave to soften their hearts to enter Islaam; some whom he gave to in order to avert their evil; and some who had embraced Islaam but were weak and needed strengthening."

Question 442) What is the ruling if the Zakah was given to one in charge of the Madrasah?

A: It is allowed if he made the supervisor his representative to spend it on the Faqir and Miskin students, on condition that the supervisor makes them the owners. The Zakah is not fulfilled by simply making the food permissible for them; nor by constructing buildings of the Madrasah; nor by using it for the salaries of the teachers or other employees of the Madrasah.

Question 443) Is Zakah fulfilled if used to buy a slave and then freeing him?

A: No.

Question 444) Is it allowed to pay one's Zakah to one's poor relatives?

A: There are two kinds of relatives. One kind is by birth e.g. parents, grandparents, children and grandchildren. The other is not by birth e.g. brothers, sisters, paternal uncles and aunts, maternal uncles and aunts, and their descendants. Zakah cannot be paid to the first category. The Zakah is not fulfilled is given to any parent or grandparent or descendant of either sex.

Zakah can be given to the second category for which there is two rewards – the reward of Zakah and the reward of maintaining family ties.

Question 445) How should it be given? Must you say, "This is Zakah"?

A: There is no need to expose that. One may give it in the guise of a gift as long as one intended it as Zakah, the Zakah is fulfilled. The recipient must also be of the categories we explained who are entitled to take Zakah and may not be of Banu Hashim.

Question 446) Is Zakah fulfilled when given to one's husband/wife?

A: It is not fulfilled according to Imaam Abu Hanifa رحمته الله. According to his two companions it is fulfilled if a woman gives it to her husband.

Question 447) What is the ruling of giving Zakah to a rich man or his son?

A: It is not permissible to give Zakah of any kind of wealth to a rich man i.e. one who has Nisab¹⁰² free of his principle needs. It cannot be given to his son who is small and has not reached puberty. It can be given to a rich man's adult son if he is poor, not possessing Nisab.

Question 448) Is there such a Faqir or Miskin to whom Zakah cannot be given?

A: Yes, Zakah cannot be given to Banu Hashim, even if they are poor. They are the descendants of 'Ali عليه السلام, Al-'Abbas عليه السلام, Ja'far عليه السلام, 'Aqil عليه السلام and Harith bin 'Abdil Muttalib عليه السلام.

¹⁰² *Fathul Qadir* (202/2): "In summary Nisab is of three kinds. One is which makes Zakah Wajib upon its owner. It increases naturally or by adding, and he is free of debt. Another Nisab is that which does not necessitate Zakah and that is when it is encompassed by the needs of the owner who can then accept Zakah. If not in his need, then Zakah is Haram for him e.g. his clothing equals Nisab and he does not need them all; or he does not need to use all his furniture in his house; or a slave whose service he does not need; or a horse he does not ride; or a house he does not need to live in. If he is really in need of any of these then he is a Faqir and one can give him Zakah. However, begging is not allowed for him. The third Nisab is that which prohibits begging. It is when he owns enough food for the day or does not own it but is capable of earning it or owns 50 Dirham (with different views on this amount)."

Al-Bahr (263/2): "The rich man owning Nisab encompasses Nisab which increases free from debt and in excess of one's principle needs and Wajib responsibilities. Also the Nisab which does not increase free of 3 Wajibs – Sadaqtul Fitr, U'hiyah and living expenses of relatives. Both of these may not take Zakah."

Many people are unaware of these distinctions and think that whoever does not have to pay Zakah can accept Zakah. Whereas there are the rich who cannot accept Zakah and there are those who have possessions beyond their principle needs, such as extra furniture or books they are not worthy of, then they cannot accept Zakah.

Question 449) If these people are in need, how can they be helped?

A: Donate to them without intention of Zakah or any other compulsory charity.

Question 450) A man paid his Zakah to someone whom he thought is entitled. It then became known that he was rich or a Hashimi or a Kafir; or he gave it to a poor man in the dark who turned out to be his father. Has his Zakah been fulfilled?

A: According to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله it has been fulfilled. Imaam Abu Yusuf رحمته الله says that he should pay it again in all these scenarios.

Question 451) What do our three Imams say about someone who paid Zakah to someone he thought was entitled and then learnt that he is his Mukatab or slave?

A: They all say that his Zakah has not been fulfilled.

Question 452) Can Zakah be paid to a healthy man who earns but does not own Nisab?

A: Yes.

Question 453) Is it permissible for someone to send his Zakah to a land where he does not live?

A: In principle, each people should spend their Zakah amongst themselves and not send it to another land. It is Makruh to do that unless it is sent to relatives or to a people in greater need than his own people.

Sadaqatul Fitr

Question 454) What is the ruling of Sadaqatul Fitr?

A: It is Wajib upon a free Muslim if he owns Nisab of any form of wealth, in excess of his residence, clothing, furniture, transport and weapons.¹⁰³

¹⁰³ It applies to a well-off person who is forbidden to take Zakah.

Question 455) One whose behalf does one have to pay?

A: Himself, his small children and his slave who serves him, even if the slave is a Kafir.

Question 456) Does he pay for his small children from his own wealth or theirs?

A: If they have wealth then from theirs, otherwise from his own.

Question 457) Is a man obligated to pay on behalf of his wife and adult children?

A: No, even if they are of his household, just as he is not obligated to pay for his slaves whom he buys and sells.

Question 458) Who should pay for a slave owned by partners?

A: It is not Wajib on any of them.

Question 459) When does Sadaqatul Fitr become Wajib?

A: It is Wajib at true dawn of 'Idul Fitr. Someone who dies before that need not have it paid on his behalf. Similarly one who is born or accepts Islaam after that is not obligated nor is it Wajib on his behalf.

Question 460) Is there a recommended time?

A: On 'Idul Fitr before going to the Musalla.

Question 461) What is the ruling of paying it before 'Idul Fitr?

A: It is allowed.

Question 462) If he delays it after 'Idul Fitr?

A: It is not forfeited. He must still pay it.

Question 463) Who are entitled to receive Sadaqatul Fitr?

A: The Faqir and Miskin who do not own any form of wealth.¹⁰⁴

¹⁰⁴ An indication that the well-off person who cannot receive Zakah, also cannot take Sadaqatul Fitr. Those others mentioned who cannot be given Zakah also cannot be given Sadaqatul Fitr.

Question 464) What is the benefit of paying Sadaqatul Fitr?

A: Abu Dawud narrates that 'Abdullaah bin 'Abbas رضي الله عنه said, "Rasulullaah ﷺ made Sadaqatul Fitr compulsory as a purification of the fast from any wasted time or obscenities and as a means of feeding the poor."

Question 465) How much is Sadaqatul Fitr?

A: A half Sa' of wheat, or a full Sa' of dates, raisins or barley.

Question 466) What is the ruling if he paid with something else, such as Dirhams, money, rice or corn?

A: It is fulfilled if he paid with something of equal value to one of the above and intended it as Sadaqatul Fitr.

Question 467) How much is a Sa'?

A: It is 8 'Iraqi Ritl according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Yusuf رحمته الله it is 5 and a third Ritl.¹⁰⁵

Kitabus Sawm [Book of Fasting]

Question 468) What is the ruling of fasting in Islaam?

¹⁰⁵ *Sharhul Qiqayah*: "A Sa' equals 8 Ritl of Majj or lentils because these two seeds are the most uniform unlike other seeds which differ greatly in size and other qualities.... Know that this Sa' is the 'Iraqi one not the Hijazi which is 5 and a third Ritl...."

The Sa' was a bowl used to measure during the time of Rasulullaah ﷺ. As Islaam spread to the corners of the world the Muslims started using weights to calculate the Sadaqatul Fitr. Because of the differences in weights of different items, the calculations of the 'Ulama differed. Each gave his own Fatwa according to his research. Currently kilograms are used in the markets and in trade. I have questioned the 'Ulama and read their books, and their answers differ greatly. What I conclude is that someone who gives 2kg of wheat as Sadaqatul Fitr will have fulfilled it according to the Ahnaf; because a half Sa' is not more than 2kg when calculating according to the Sa' Baghdadi Ritl.

At-Tashīl ad-Darūri (Part 1)

A: The fast of the month of Ramadan is Fard upon every mature Muslim, male and female. Allaah says, "O you who believe! Fasting has been prescribed upon you just as it was prescribed upon those before you that you may acquire Taqwa." [al-Baqarah:183]

The fasts besides the fast of Ramadan are voluntary and one gets rewarded for them just as in other voluntary worship. However, if one has made nazr [vow] of a fast then it becomes Wajib to fulfil it.

Question 469) What is the meaning of Sawm linguistically and in Shari'ah? What are the beginning and ending times?

A: Sawm means abstention linguistically. In Shari'ah it means to abstain from food, drink and sex from true dawn until sunset with the intention of fasting.

Question 470) Is there any leeway for anyone not to fast during Ramadan?

A: Yes, someone who is a traveller of Qasr distance; or is sick and fears that the fast will worsen the sickness, then they are allowed not to fast during Ramadan. They must fulfil the missed days thereafter. It is however better for the traveller to fast if he will not experience difficulty by it.

Question 471) A traveller did not fast during his travel, or a sick person did not fast during his sickness. They then die in that state of travel or sickness. Is anything Wajib upon them?

A: No.

Question 472) If the sick person is cured or the travel becomes resident, is Qada necessary?

A: Yes, upon the sick person in the days he is well and upon the traveller in the days he stays resident, whether homeland or temporary.

Question 473) Is there anyone else besides a traveller and sick person who are allowed not to fast in Ramadan?

A: A pregnant woman or a woman feeding milk to a baby who fears destruction of herself or her baby is allowed not to fast in Ramadan. The missed days must be kept afterwards.

At-Tashīl ad-Darūri (Part 1)

Question 474) Is there anyone who compulsorily does not fast in Ramadan?

A: Yes, it is Wajib on a woman in her menses or childbirth period not to fast. They are not allowed to fast, their state negates fasting.

Question 475) Will they fulfil their missed fasts after Ramadan?

A: Yes.

Question 476) Are there people upon whom missed Salah is not Qada, but Fidyah [compensation] is Wajib upon them?

A: Shaykh Fani.

Question 477) What is meant by Shaykh Fani?

A: Someone so old that he will neither be able to fast during Ramadan nor after it right until the end of his life.

Question 478) What is Fidyah?

A: To feed everyday a Miskin just as one feeds them in Kaffarat.¹⁰⁶

Question 479) What is done when someone did not fast due to travel or illness and then had days to make Qada but did not do so and then his death approaches?

A: He should seek forgiveness and turn unto Allaah. He must also leave a bequest to his executor, instructing him to feed on his behalf a Miskin from his wealth a half Sa' of wheat or a Sa' of dates or barley.

Question 480) If a child attains puberty or a Kafir embraces Islaam in the day of Ramadan, what should they do?

A: They should abstain for the rest of the day from that which terminates fast and should fast the remainder of Ramadan.

Question 481) Do they keep Qada for the partial day they reached?

A: No.

¹⁰⁶ *Al-Bahr ar-Raiq*: "... a Fidyah of a half Sa' of wheat or raisins, or a Sa' of dates or barley just as Sadaqatul Fitr. However, in this case inviting to 2 meals which satiates is allowed, as opposed to Sadaqatul Fitr." [308/2]

Question 482) What is the ruling of someone who was unconscious during Ramadan?

A: If someone fell unconscious during a day of Ramadan after having made intention of fast, need not keep Qada of that day. He will keep Qada of any subsequent days.

Question 483) What is the ruling of an insane person who regains his sanity during the day of Ramadan?

A: He will make Qada of the passed days and fast the remaining days.

Question 484) If a traveller who was not fasting reached home during the day of Ramadan or a woman in her menses attained purity during the day, what should they do?

A: They should abstain from the three nullifiers for the rest of the day out of honour for the month.

What establishes Ramadan

Question 485) When does the fast of Ramadan become Wajib and when does the month become established?

A: Rasulullaah ﷺ said, "Fast when you see it and stop fasting when you see it. If it is cloudy then complete 30 days of Sha'ban." [al-Bukhari and Muslim]

It is thus Wajib on the people to search for the new moon on the 29th of Sha'ban. If they see it they must fast the next day. If the moon is covered by cloud [they cannot see it] they must complete 30 days of Sha'ban and then fast.

Question 486) If a single man testified that he saw the new moon of the 29th of Sha'ban and the sky was not clear, will his testimony be accepted?

A: Yes, the testimony of a single Muslim will be accepted in that case, be it male or female, free or slave.

Question 487) And if the sky was clear and one or two men testified?

A: The testimony will not be accepted unless a large group testifies so that there is no doubt of their news.

Question 488) That concerns establishing the new moon of Ramadan. What of the new moon for 'Id?

A: If the sky is not clear then the testimony of two men or a man and two women will only be accepted. If it is clear then a whole group must testify so that there is no doubt.

Question 489) What should a man do who has seen the moon of Ramadan or 'Id and the Imam did not accept his testimony?

A: If it occurred for Ramadan then he should fast alone. If it occurred for 'Id then he should fast with the people and ignore his sighting.

Conditions of the intention

Question 490) You mentioned the condition of intention when you defined fasting. What are the details thereof?

A: The intention is the affirmation in the heart that one is fasting a particular fast.

There are several categories of fasts:

1. Fard i.e. Ramadan
2. Specified Nazr [vow] such as vowing to fast next Thursday or the day a particular date will occur.
3. General vow such as vowing to fast for the sake of Allaah.
4. Qada of Ramadan.
5. A Wajib Qada of nullified Nafl Fast.
6. Kaffarat e.g. broken oath; broken fast; Zhihar and killing.
7. Nafl.

The fast of Ramadan and specified vow and Nafl can be intended from the night but it is not a condition that it is made at night. If no

intention was made until the morning then it is valid until before half the day.¹⁰⁷

Fasts of Qada of Ramadan; general vow; Kaffarat and Qada of nullified Nafil are not valid except with an intention from the night.

Question 491) If someone performing a Tamattu' or Qiran¹⁰⁸ Hajj because he cannot afford Hady, must he intend the fast from the night?

A: Yes, just as the fasts of the other Kaffarat.

Question 492) It is apparent from your words that Qada is made for nullified Nafil. Please explain.

A: The one performing Nafil is in control of himself before commencing. Once he begins it is Wajib to complete. If he nullifies it then it is Wajib to make Qada of what he started, be it fast, Salah, Hajj or 'Umrah.

What nullifies Fast and makes Qada alone Wajib or Kaffarah with it

Question 493) What nullifies Fast?

A: Ejaculating due to kissing or touching. Swallowing a pebble or iron or seed. Intercourse whether vaginal or anal. To take an enema or snuff. To put drops of medicine in the ear. Taking medication which reaches the stomach or brain. Having Suhur [predawn meal] and thinking that dawn did not arise when it did. Having Iftar [breaking fast meal] thinking that the sun set when it did not. In all these scenarios the fast is void. Qada must be kept but not Kaffarah.

Question 494) If he places drops on the outer opening of the urethra?

¹⁰⁷ It is necessary that there be an intention for most of the day. The half is from dawn until bright morning, not Zawal which is later. The intention must therefore be made before that so that most of the day is covered.

¹⁰⁸ These will be defined in Kitabul Hajj

A: The fast is not void according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله. It is void according to Imaam Abu Yusuf رحمته الله.

Question 495) Does unintended vomiting or induced vomiting nullify the fast?

A: If he is overpowered by vomiting then the fast is not void. If he deliberately vomits a mouthful full then he must render Qada.

Question 496) What makes Qada and Kaffarah Wajib together?

A: One who intentionally has intercourse – vaginal or anal – or one who eats or drinks food or medicine. His fast is void and he must make Qada and Kaffarah.

Question 497) What is the Kaffarah?

A: To free a slave. If unable to then fast two months consecutively in which there is no Ramadan or days wherein fasting is forbidden – we shall explain that InshaAllaah. If he is unable to do that then he must feed 60 Miskin.

Question 498) Is there kaffarah for voiding fasts besides Ramadan?

A: No, even if it is voiding Qada of Ramadan

What does not void fast

Question 499) Mention those things which the fasting person undergoes which do not break the fast.

A: The fast is not voided if he ate, drank or had sex forgetfully. If he slept and had a wet dream; or looked at a woman and ejaculated; or applied oil; or had cupping; or applied antimony; or kissed without ejaculating; none of these nullify the fast.

Makruh acts while fasting

Question 500) What is Makruh for the fasting person to do?

A: To kiss, if he cannot control himself. If he can control himself then there is no harm. It is also Makruh to taste or chew or clean the

mouth with anything besides Miswak, such as medicinal powder. It is Makruh for a woman to chew food for her child if she can avoid it. If it is unavoidable then there is no harm.

Qada

Question 501) Must Qada of the fasts of Ramadan be kept consecutively?

A: No, one may keep them separately or consecutively.

Question 502) What should he do if he delayed it so long that the next Ramadan arrived?

A: He should first fast the current Ramadan and then keep the Qada. There is no Fidyah to be paid for this.

Question 503) A man died with unfulfilled Qada. He left a bequest that his executor pays his Fidyah from his estate. What is the duty of the executor?

A: The bequest may be fulfilled from a third of the estate only. The executor will then feed on his behalf a Miskin for every day missed, a half Sa' of wheat or a Sa' of dates or barley.

Voluntary Fasts

Question 504) Are there fasts outside of Ramadan?

A: The Fast of Ramadan is Fard. If he keeps Nafil fasts outside of Ramadan he will be rewarded if Allaah wills.

Question 505) Are there days when voluntary Fasts are forbidden?

A: Yes, there are five days when fasting is forbidden:

- 'Idul Fitr
- 'Idul Adha
- The three days thereafter called the Days of Tashriq.

Question 506) Is there greater virtue for some fasts over others?

A: Yes, the Ahadith mention the virtues of certain special fasts:

- 'Aishah radiyAllaahu 'anha narrates, "Rasulullaah ﷺ used to fast Mondays and Thursdays." [at-Tirmizi]
- Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ said, "Deeds are presented Mondays and Thursdays. I like that my deeds be presented and I am fasting." [Ibid]
- Abu Hurayrah رضي الله عنه narrates, "Rasulullaah ﷺ would never leave the fasts of Ayyamul Biaza whether at home or travelling." ¹⁰⁹
- Abu Qatadah رضي الله عنه narrates that Rasulullaah ﷺ said, "For the fast of 'Arafah¹¹⁰ I hope that Allaah will forgive the sins of the passed year and the next year. For the fast of 'Ashura¹¹¹ I hope that Allaah will forgive the sins of the passed year." [Muslim]
- Abu Ayyub al-Ansari رضي الله عنه narrates that Rasulullaah ﷺ said, "He who fasts Ramadan and then follows it with six days of Shawwal is like one who fasted the whole period (year)." [Muslim]

I'tikaf

Question 507) What is the definition and status of I'tikaf?

A: It is to stay in the Masjid with an intention. It is Sunnah Muakkadah upon Kifayah during the last days of Ramadan. If a single man of the area sits for I'tikaf then the obligation is lifted from the community, if not, then they are all guilty of abandoning that Sunnah.

Question 508) Is there any other kind of I'tikaf in Shari'ah?

A: Yes, there are Mustahab and Wajib I'tikaf. The least Mustahab I'tikaf is for a single moment in which one enters the Masjid and intends I'tikaf. He will remain in I'tikaf until he leaves the Masjid.

Question 509) When does I'tikaf become Wajib?

A: When one makes a nazr [vow] of I'tikaf it becomes Wajib.

¹⁰⁹ Narrated by an-Nasai. In the narration of at-Tirmizi they are explained as the 13th, 14th and 15th of each month.

¹¹⁰ 9th Zul Hijjah

¹¹¹ 10th Muharram

Question 510) If one vowed I'tikaf of the day, does the night become Wajib as well?

A: Yes, the nights are subsidiary to the days, even if he did not stipulate it.

Question 511) Is fasting a condition for a vowed I'tikaf?

A: Yes, even if he says, "For Allaah I will make I'tikaf for a month without fasting."

Question 512) What is the Mu'takif [one making I'tikaf] forbidden from?

A: He is prohibited from sex and its incitements such as touching and kissing. If he has sex in the day or night, forgetfully or deliberately; or ejaculates due to kissing or touching his I'tikaf is void one and must make Qada.

Question 513) Can the Mu'takif leave the Masjid?

A: He may not leave except for natural needs such as urinating and defecating. According to Imaam Abu Hanifa رحمته الله if he leaves for even a moment without an excuse then the I'tikaf is void. According to his two companions it is only void if he left for more than half the day.

Question 514) If he is in I'tikaf in Masjid where there is no Jumu'ah, how does he pray Jumu'ah?

A: When the time is for Jumu'ah he will go to a Masjid where Jumu'ah is prayed and return to I'tikaf after the Salah.

Question 515) What is the Mu'takif allowed to do?

A: He may eat, drink and sleep in the Masjid. He may buy and sell in the Masjid without bringing the commodity itself.

Question 516) We see the people in I'tikaf not talking, thinking that that nullifies the I'tikaf. What do the Fuqaha say about that?

A: Talking does not nullify the I'tikaf. However, he should only speak good things and bad speech is prohibited in all circumstances. Silence with the belief that it is a part of I'tikaf is Makruh.

Kitabul Hajj

Question 517) What is Hajj linguistically and Islaamically?

A: Linguistically it is an intention to do something which is honoured. In Shari'ah is it the visiting of specified places at specified times with specified actions. We shall explain all these in detail InshaAllaah.¹¹²

Question 518) What is the status of Hajj in Islaam?

A: It is a pillar of Islaam. Whoever disputes its being Fard it out of the pale of Islaam. Allaah says, "For Allaah upon the people is that they make Hajj of the House upon whoever has the means to do it."

Question 519) Upon whom is Hajj Fard?

A: Hajj is Fard upon free, mature, intelligent, healthy Muslims on condition that the way is safe and they have means of travel, provision and transport, whether through possession or rental. Another condition is that this wealth be in excess of his residence, other necessities and expenses on his family until his return.

Question 520) Are there any additional conditions for a woman?

A: Yes, she must travel with a Mahram or husband. She may not travel without one of them if her home is at least the distance of Qasr away from the Ka'bah.

Faraid, Wajibat and Sunan of Hajj

Question 521) What is Fard in Hajj?

A: There are 3 Fard:

1. Ihram
2. Wuquf [staying] at 'Arafat
3. Tawafuz Ziyarah

¹¹² The special place is the Ka'bah and the Plains of 'Arafat. The special time is the times specified for Tawaf, staying at 'Arafat. The special acts are Ihram with then intention of Hajj which should be made before the Tawaf and 'Arafat.

Question 522) What is Wajib in Hajj?

A: They are as follows:

1. Wuquf of Muzdalifah after dawn on the Day of Nahr.
2. Sa'y between as-Safa and al-Marwa.
3. Pelting the Jimar.
4. Tawafus Sadr [when first coming] for one from Afaq [outside the Haram and Hill]
5. Shaving or shortening the hair.
6. Extending the Wuquf of 'Arafat until sunset.
7. For one performing Qiran [Qarin] or Tamattu' [Mutamatti'] to slaughter a Hady.
8. A Mufrid [one performing Ifrad] should observe the sequence of pelting and then shaving. The Qarin and Mutamatti' should observe the sequence between pelting then slaughter then shaving.
9. To perform Tawafuz Ziyarah during the Days of Nahr.
10. Shaving or shortening the hair within the Haram.
11. and that they be in the Days of Nahr.

Question 523) What are the Sunan?

A: They are:

1. Tawaful Qudum for a Mufrid from Afaq as well as a Qarin.
2. Ramal and Idtiba' in Tawaf and to intend Sa'y thereafter between as-Safa and al-Marwa.
3. To go to Mina on the Day of Tarwiyah and to spend the following night there.
4. To leave Mina for 'Arafat after the sun has risen on the Day of 'Arafat.
5. To spend the night of the Day of Nahr at al-Muzdalifah.
6. To make Ghusl at 'Arafat.
7. To spend the nights at 'Mina of the days of Nahr (i.e. 10th / 11th / 12th).

The Miqat and Ihram

Question 524) What are the Miqat which are not permissible to pass except in a state of Ihram?

A: The Nabi ﷺ established 5 Miqat:

1. Zul Hulayfah for the people of al-Madinah. [about 14km from al-Madinah in the direction of Makkah.]
 2. Zatul 'Irq for the people of 'Iraq. [It is no longer known where it is, they therefore go through al-Madinah and enter into Ihram at Zul Hulayfah].
 3. al-Juhfah for the people of Syria. [This was a big town in the era of Rasulullaah ﷺ. It was 4 miles from Rabigh on the left side when going to Makkah. It has become effaced and the roads of the Hujjaj do not pass through it. The people of Syria enter Ihram when they pass Zul Hulayfah.]
 4. Qarn for the people of Najd.
 5. Yalamlam for the people of Yemen. [It is also called Sa'diyah today. It is a mountain the people of Yemen pass when going to Makkah.]
- These are for the people of the lands mentioned and whoever passes them.

Question 525) Those Miqat are for people living outside those borders. What about those people who live at the Miqat, between the Miqat and the Haram, or in the Haram?

A: He who lives at the Miqat will enter into Ihram there. The Miqat of one living between the Miqat and the Haram is the Hill. The Hill is the area between the Miqat and Haram. The Hajj Miqat of one living in the Haram is the Haram and his 'Umrah Miqat is the Hill.

Question 526) Is it permissible to enter Ihram before these Miqat?

A: Yes, in fact it is better to enter early into Ihram in the months of Hajj when it is better if he can control himself from the Ihram restrictions.

Question 527) And if he entered Ihram after the Miqat?

A: That is not permissible. If he did it after passing the Miqat then Damm is Wajib on him.

Question 528) A man travelling to Makkah does not pass any of the mentioned Miqat. Where should he enter Ihram?

A: When he crosses a line going through two Miqat on either side of him.

Question 529) What is Ihram?

A: Intention of Hajj or 'Umrah with Tabiyah.¹¹³

Question 530) Is there a Sunnah method of Ihram?

A: Yes. When one intends Ihram one should make Wudu, although Ghusl would be better. He will then don two new or at least washed cloths which are not stitched like clothing. One will be the Izar [cover the lower body] and one will be the Rida [cover the upper body]. He will apply fragrance if he has. He will pray two Rak'at covering his head. Thereafter he will uncover his head and say as an intention of Hajj, "O Allaah, I intend Hajj, so ease it for me and accept it from me."

He will then recite the Talbiyah, "Labbayk, Allaahumma labbayk. Labbayka la sharika laka labbayk.

Innalhamada wanni'mata laka wal Mulk. La sharika laka — At Your service, O Allaah at Your service. At Your service there is no partner unto You, at Your service. Verily praise and bounties belong to You and the kingship. There is no partner with You."

He will not add in between these words. It is allowed to add words afterwards. Once he recited the talbiyah then he is in Ihram. He should now be careful of the Ihram restrictions.

Question 531) If a woman is in her menses or childbirth period, may she enter Ihram of Hajj or must she wait until the bleeding stops?

A: She will not wait. She will make Ghusl if she finds a place to do it. She will then comb her hair and enter Ihram without the two Rak'at. She will intend Hajj or 'Umrah and recite Talbiyah. She is now in Ihram. When she enters Makkah she will await the end of the bleeding. She will then make Ghusl and Tawaf.

¹¹³ The intention need not be joined specifically with Talbiyah which is Sunnah. It is allowed to join it with any other Zikr. Talbiyah must be with the tongue, if only in the heart then it is not valid. [Raddul Muhtar 158/2]

Ihram restrictions

Question 532) What are the restrictions when in Ihram?

A: There are as follows:

1. Obscenity
2. Lewdness
3. Dispute
4. Hunting land animals
5. Showing where prey are to be found
6. Indicating where it is.
7. Wearing a shirt, trousers, cap, robe or anything which is stitched or embroidered or made in the shape of the body.
8. Wearing gloves or leather socks, unless one does not find sandals. In that case it will be cut to expose the Ka'b [humped bone on top of feet]
9. Covering head or face. No cap or turban may be worn.
10. Applying fragrance.
11. Shaving or shortening the hair on the head or the beard or removing a hair from the body wherever it may be.
12. Cutting the nails.
13. Wearing cloth dyed with substances like safflower and saffron unless it has been washed and does not exude fragrance.

Question 533) Are these the restrictions of Ihram of Hajj or 'Umrah?

A: Both.

Question 534) Is there a difference between the restrictions of a man and a woman?

A: They apply to both, except that she will wear the clothing she normally wears. She will cover her head but not her face.

Question 535) Can one in Ihram [Muhrim] bath?

A: Yes, but without any kind of fragrance including soap. He may not wash away dirt [in such a way that hair falls.]

Question 536) May the Muhrim rest in the shade of a house, car, tent etc?

A: All these are allowed.

Question 537) What is the ruling to read a great quantity of Talbiyah?

A: It is Mustahab, especially after Salah and dawn, when changing in any state, when morning or evening begins, when ascending a height, when going down a valley or meeting another group.

Entering Makkah and Tawaful Qudum

Question 538) What does a Mufrid do when entering Makkah?

A: He should first go to al-Masjid al-Haram in a state of Wudu. When he sees the Ka'bah he should recite, "Allaahu Akbar!" and, "La ilaha illAllaah!" He will then make Tawaf which will be the first Tawaf of the Hajj -e- Mufrid. It is a Sunnah for the Afaqi who came from beyond the Miqat. It is called Tawaful Qudum. It is not a duty for the people of Makkah and the Hill.¹¹⁴

Question 539) Explain how Tawaf should be performed.

A: He will begin by al-Hajar al-Aswad. He will face it and raise his hands when saying, "Allaahu Akbar." He will then say, "La ilaha illAllaah," and place his hands on it [Istilam] and kiss it if he can do it without harming any Muslim. If he cannot kiss it without harming a Muslim he will place his hands on it and kiss his hands. If he cannot, then at least one hand and kiss it. The right hand is preferred. If he cannot do that then he should touch the stone with something he is holding such as a staff, then kiss that object. If he cannot do that he should stand in line with the stone and face it. He will raise his hands in line with his ears as at the time of Takbir, with his palms facing the Stone. He will be indicating as if he is placing his palms on the Stone. He will then kiss his palms. He will then move to the right of the Stone

¹¹⁴ *Ghunyatun Nasik*: It is Sunnah for the Mufrid Hajj and the Qarin. If he entered before the months of Hajj then it is not Sunnah for one making 'Umrah, the Mutamatti', the Makki, the people of the Miqat and those living between there and Makkah."

Al-Fath: "It is Sunnah for the Afaqi not for others."

to the section where the Door of the Ka'bah is. He will keep the Ka'bah to his left and will pass on the outside of the Hatim. He will make Istilam of the Yemeni Corner when he reaches it. He will then again make Istilam of the Stone and kiss it. This is a complete single circuit. Seven circuits must be completed. Istilam of the Stone must be done as mentioned. The Tawaf begins and ends with Istilam of the Stone.

Ramal and Idtiba'

Question 540) What is the ruling of Ramal and Idtiba'?

A: They are Sunnah for one intending to perform Sa'y between as-Safa and al-Marwa after the Tawaf. Ramal is only Sunnah in the first three circuits. Idtiba' is Sunnah in all seven. Thus one who intends Sa'y between as-Safa and al-Marwa will perform Ramal and Idtiba', otherwise not. The one performing 'Umrah will perform both acts in his Tawaf because he will make Sa'y between as-Safa and al-Marwa after his Tawaf of 'Umrah.

Question 541) Explain the Sunnah of Ramal.

A: It is to shake the shoulders during his walk like one going for a duel between two armies. He should hasten in his walk.

Question 542) What is Idtiba'?

A: To take the end of the Rida from his right shoulder and throw both ends on his left shoulder. The right shoulder will be left exposed.

Rak'at of Tawaf

Question 543) Is anything Wajib after Tawaf?

A: Yes, two Rak'at.

Question 544) Where are they prayed?

A: It is best at Maqam Ibrahim, in such a way that it is between him and the Ka'bah. If prayed anywhere else in the Masjid where it is easy for him, it is permissible.

Question 545) Are the Masnun Surahs to be recited in them?

A: Jabir رضي الله عنه narrated that Rasulullaah ﷺ recited al-Kafirun in the first Rak'ah and al-Ikhlās in the second Rak'ah. [Muslim]

Sa'y between as-Safa and al-Marwa

Question 546) How is Sa'y between as-Safa and al-Marwa performed?

A: When the one performing Hajj or 'Umrah intends to make Sa'y he must make Istilam of the Black Stone after the two Rak'at of Tawaf. He will then go to as-Safa and ascend it at least a bit. He will recite, "Innas-Safa wal-Marwa min Sha'airillah." He will face the Ka'bah and recite Takbir and, "La ilaha illAllaah," and salutations upon Rasulullaah ﷺ. He should ask Allaah for his needs. As per the narration of Muslim it is Sunnah to recite the following thrice, "La ilaha illahu wahdahu la sharika lahu. Lahul mulku wa lahul hamdu wa huwa 'ala kulli shayin qadir. SadaqAllaahu wa'dahu wa nasara 'abdahu wa hazamal Ahzab wahdah. — There is no Illah but Allaah alone who has no partner. To Him belongs all kingship and praise and He has power over everything. Allaah was true to His promise and helped his slave and alone defeated the confederates."

He will then head for al-Marwah at a normal pace. When he reaches the green markings he will hasten until the next green marking whilst reciting, "O my Rabb, Forgive me and have mercy. You are Most Honourable and Noble. Overlook that which You know of."¹¹⁵

After passing the second green marking he will resume a normal pace. When he reaches al-Marwah, he will climb it and do the same as per as-Safa. This is one circuit. He will complete seven circuits. He began at as-Safa and will end at al-Marwa. He will remember Allaah throughout the Sa'y. Everytime he passes between the green markings he will run, going time and coming time. A woman will not run, she will walk at her normal pace throughout the Sa'y.

¹¹⁵ At-Tabrani, narrated from Ibn Mas'ud رضي الله عنه

Going to Mina and from there to 'Arafat

Question 547) The Hajji has completed the Tawaful Qudum and the Sa'y. What should he do whether there are many or few days left for Hajj?

A: He will stay in Makkah in Ihram. He will make Tawaf at every opportunity. He will pray the 5 Salah in al-Masjid al-Haram. He will not miss them with congregation, because the Salah there is worth 100,000 Salah elsewhere. On the Day of Tarwiyah he will go to Mina.

Question 548) What will he do when he reaches Mina?

A: He will stay there until after sunrise on the Day of 'Arafat. He will pray 5 Salah with congregation at Mina.

Question 549) What will he do when the sun has risen on the Day of 'Arafah?

A: When the sun rises over Thabir, the mountain at Mina, he will head for 'Arafat and stay there until the sun sets. After Zawal the Imam will lead the people in Zhuhr and 'Asr. He will deliver two Khutbahs before Salah in which he will teach the people about the Salah, the Wuquf of 'Arafat, the Wuquf at al-Muzdalifah, the pelting of the Jimar, the slaughter, the shaving and Tawafiz Ziyarah. He will lead them in Zhuhr and 'Asr in the Waqt of Zhuhr, with one Azan and two Iqamah. This is joining of the two Salah in the earlier Waqt. The conditions for this are that the Imam of the Muslims or his representative lead the Salah, that they be in Ihram of Hajj and the Waqt be Zhuhr. This is according to Imaam Abu Hanifa رحمته الله. The one praying on his own or behind any other Imam besides the Imam of Hajj will pray each Salah in its own Waqt. According to Imaam Abu Yusuf رحمته الله the Salah will be joined even for one praying on his own.

Question 550) What will he do after Salah?

A: He will then stay at a place of Wuquf. All of 'Arafat is a place for Wuquf except the low point. It is recommended that he engage in as much du'a as possible until sunset. He will pray 'Asr in its Waqt if he

did not do so with the Imam of Hajj. It is Mustahab to make Wuquf near Jabal ar-Rahmah, standing as much as possible and making du'a. It is also allowed to engage in du'a at one's tent. It is Mustahab for the Imam of Hajj to make Wuquf at 'Arafat upon his mount, making du'a and teaching people the laws of Hajj.

Going to al-Muzdalifah

Question 551) After the Wuquf at 'Arafat, what should be done after the sun sets?

A: When the sun sets he should leave 'Arafat and head for al-Muzdalifah. He will not pray Maghrib at 'Arafat, nor on the way to al-Muzdalifah. At al-Muzdalifah he will pray Maghrib and Isha combined, whether with the Imam of Hajj or not. This is the joining in the latter Waqt.

Question 552) Will he join the Salahs if praying alone?

A: Yes. Congregation is not a condition.

Question 553) What is the ruling of praying Maghrib at 'Arafat or on the road?

A: It is void and must be repeated.

Question 554) What will he do after these two Salah?

A: He will spend the night at al-Muzdalifah until true dawn. He will then pray Fajr with congregation while it is still dark. He will remain and remember Allaah and offer du'a until just before sunrise. All of al-Muzdalifah is a place for the Wuquf except for the Valley of Muhassar.

Return to Mina, Pelting the Jamrat, Slaughter and Shaving

Question 555) What does the Hajj do after the Wuquf at al-Muzdalifah?

A: A short while before sunrise he will head for Mina. When he reaches there he will pelt Jamratul 'Aqabah with 7 pebbles, such as the pebbles used in Hazaf [a game where a pebble is flung from the nail of the thumb]. He will recite each time he pelts, "In the Name of Allaah, Allaah is the greatest. For the pleasure of ar-Rahman, and to displease the Satan."

He will not hang about there after the pelting. He will end the Talbiyah with the throwing of the first pebble.

Question 556) Does he have to slaughter?

A: For the Mufrid slaughter is Mustahab only.

Question 557) What does he do next?

A: After pelting Jamratul 'Aqabah on the Day of Nahr, the Mufrid will clip his hair. To shave it is better. He is now released from Ihram and all restrictions except (taking benefit from) woman are lifted from him. He may wear stitched trousers and shirts etc. He may apply fragrance to his body and clothing, cut his hair and clip his nails. The Mutammati' and Qarin must slaughter the Hady after the pelting of Jamratul 'Aqabah. He will then only cut or shave his head.

Question 558) If a Mufrid wants to slaughter, should he cut or shave his head before or after the slaughter?

A: Both are allowed, but to do so after the slaughter is better.

Question 559) Where will he cut or shave?

A: Within the boundaries of the Haram. If he does so outside the boundaries then he has to pay Damm.

Tawafuz Ziyarah

Question 560) Are there any other duties remaining on the Day of Nahr after shaving?

A: Yes, Tawafuz Ziyarah which is a Fard Tawaf. Its time is the three days from sunrise on the Day of Nahr until sunset on the 12th. It is best to do it on the Day of Nahr. After shaving or cutting his head he

will go to Makkah and circle the Ka'bah seven times as we discussed under Tawaful Qudum. After Tawafuz Ziyarah women become permissible for him as well.

Question 561) Will he make Ramal and Idtiba' as well?

A: If he did not do Sa'y between as-Safa and al-Marwa after Tawaful Qudum he must do so now after Tawafuz Ziyarah. He will now make Ramal in the first three circuits of Tawafuz Ziyarah. There is no opportunity for Idtiba' as he wears normal clothing after shaving.

Question 562) What is the ruling if he delays the Tawafuz Ziyarah after the three days you have mentioned?

A: Damm is Wajib upon him according to Imaam Abu Hanifa رحمته الله but not according to his two companions.

Pelting the 3 Jimar in the 3 Days

Question 563) What does he do after Tawafuz Ziyarah?

A: He will return and stay at Mina. He will pelt the 3 Jimar on the 11th and 12th. Each day the pelting will be after Zawal. He will first pelt the Smallest Jamrah, which is closest to Masjidul Khayf; then the Middle Jamrah; then the Biggest Jamrah which is Jamratul 'Aqabah. He will pelt each Jamrah with 7 pebbles, reciting Takbir and "La ilaha illAllaah" with every pebble. After pelting the first two he will turn to the right of the place of pelting and make du'a. He will not pause for the du'a after pelting the Biggest Jamrah, but will offer his du'a whilst walking away from it.

Question 564) If he pelts during these two days before Zawal, is it valid?

A: The Waqt of pelting in these two days is from Zawal until true dawn. He who hastens and pelts before Zawal must repeat his pelting.

Question 565) What does he do after pelting the 3 Jimar on these two days?

A: He may either leave for Makkah or stay at Mina and pelt on the 13th as well. Allaah says, "He who hastens for the two days only

there is no sin on him. He who tarries beyond that, there is no sin on him – for those who have Taqwa."

However, if the sun sets on the 12th and he is still at Mina, it is Makruh for him to leave Mina before pelting on the 13th. If he is at Mina when true dawn arises on the 13th, then the pelting of that day becomes Wajib.

Question 566) When must one who tarries to pelt on the 13th do it?

A: It is Sunnah to pelt after Zawal. The time on this day is until sunset, so it is incorrect after sunset. According to Imaam Abu Hanifa رحمته الله it is allowed to pelt before Zawal, although it is Makruh for being contrary to the Sunnah. His two companions say that pelting is not correct before Zawal on that day as well.

Question 567) A man stays at Mina to pelt during these days. Is it permissible for him to take his luggage to Makkah?

A: It is Makruh for him to take his luggage to Makkah while he stays at Mina.

Tawaful Wida' [Farewell Tawaf]

Question 568) What should he then do when he reaches Makkah after the first or second Nahr?

A: After the pelting the only act of Hajj which remains is Tawaful Wida'. It is also called Tawafus Sadar. It is Wajib upon the Afaqi. When he returns to Makkah he may now perform Tawaful Wida' and return to his homeland. If he is prevented from leaving for any reason, he can stay how long he wishes.

Question 569) Should he then perform Tawaful Wida' when he leaves Mina or delay it until he ultimately leaves Makkah?

A: As soon as he makes a Tawaf after Tawafuz Ziyarah is counts as Tawaful Wida', even if his intention was Nafil Tawaf. It is however - Mustahab for him to delay his intended Tawaful Wida' until he is going to leave for his homeland.

A: No, because there is no Sa'y thereafter.

Sundry Masail

Question 571) A man enters Ihram at the Miqat and does not enter Makkah. He goes and does Wuquf at 'Arafat without having made Tawaful Qudum. What should he do?

A: Tawaful Qudum falls away from him.

Question 572) A man reaches 'Arafat after sunset of the Day of 'Arafah. Is his Hajj valid?

A: Whoever makes Wuquf of 'Arafah anytime from the Day of 'Arafat from Zawal until dawn of the Day of Nahr has attained Hajj; however short the time.

Question 573) Is it a condition to make du'a at 'Arafat to attain Hajj?

A: The du'a is Sunnah. One who passes through 'Arafah even for a short time, whether he was awake or asleep or unconscious; as long as he was in Ihram his Wuquf is valid, even to the extent that he did not know that that was 'Arafat.

Question 574) Are all these the regulations for a man alone or for a woman as well?

A: A woman does the same except that she does not expose her head. She will not drape her Rida or veil over her face. She will not raise her voice in Talbiyah. She will not make Ramal in Tawaf. She will not run between the green markings during Sa'y. She will clip her hair and not shave it. If she is in her menstrual or childbirth period when entering Ihram or after entering, and does not become pure until the Day of Tarwiyah, she will not perform Tawaful Qudum. She will in that case go to Mina and perform all the rest of the Hajj rituals, except that she will not make Tawafuz Ziyarah until she is pure. If she has menses or childbirth after Tawafuz Ziyarah and the time has come for her departure, then she may omit Tawaful Wida' without any penalty.

'Umrah

Question 575) What is 'Umrah linguistically and in Shari'ah? What are its Fard and Wajib actions? How is it performed?

A: Linguistically 'Umrah means to visit. In Shari'ah it encompasses the following four:

1. Ihram
2. Tawaf of the Ka'bah
3. Sa'y between as-Safa and al-Marwah
4. Shaving or cutting the head.

The first two are Fard and the second two are Wajib. When one wants to perform 'Umrah then one will enter Ihram at the Miqat. First perform Wudu or Ghusl and then two Rak'at. Then say the intention of 'Umrah, "O Allaah I intend 'Umrah. Ease it for me and accept it from me." Then recite Talbiyah as we mentioned in the Ihram of Hajj. Once the Talbiyah is recited then Ihram has been entered. Upon entering Makkah he will circle the Ka'bah seven times and then make Sa'y between as-Safa and al-Marwah. He will then shave or clip hair off the head. Upon doing that the 'Umrah is complete and he has emerged from the Ihram as well.

Question 576) Are there restrictions in the Ihram of 'Umrah?

A: Yes. They are the same as the restrictions of the Hajj Ihram mentioned.

Question 577) What is the Miqat for 'Umrah Ihram?

A: For the Afaqi it is the same as the Miqat of Hajj. The Hilli will enter Ihram from the Hill. The one in the Haram will leave for the Hill where he will enter Ihram.

Question 578) What is the status of 'Umrah in Islaam?

A: It is Sunnah Muakkadah once in a lifetime for one who is able to reach Makkah. It has great virtues.¹¹⁵

¹¹⁵ Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ said, "One 'Umrah to the next expiates what is between them. There is no reward for an accepted Hajj except Jannah." [al-Bukhari and Muslim]

Question 579) What is the ruling of talbiyah in the Ihram of 'Umrah?

A: Talbiyah is a condition for entering Ihram. It is Mustahab to recite is frequently thereafter just as in the Ihram of Hajj. One will stop reciting it when beginning the first circuit of Tawaf.

Question 580) Is there Tawaful Qudum and Tawaful Wida' in 'Umrah?

A: No. Every Tawaf made after Ihram will be part of the 'Umrah.

Question 581) Is there a specified time for 'Umrah as in Hajj?

A: No. One may perform 'Umrah whenever one wishes, except that it is Makruh Tahrimi from the 9th Zul Hijjah until the last day of Tashriq. There is greater reward for 'Umrah during Ramadan. 'Umrah then earns the reward like that of Hajj.¹¹⁷

Question 582) Can 'Umrah be made with Hajj?

A: Yes, it will be explained in the discussions on Tamattu' and Qiran.

Qiran

Question 583) May the Ihram of Hajj and 'Umrah be joined?

A: Yes. It is better than Ifrad and Tamattu'. Tamattu' is better than Ifrad. Whoever joins the two Ihram is called Qarin and his Hajj is Qiran.

Question 584) Describe the Qiran.

A: One will enter Umrah and Hajj together at the Miqat. After the two Rak'at one will recite, "O Allaah! I intend Hajj and 'Umrah. Ease them for me and accept them from me." Then recite Talbiyah which will enter you in Ihram of Hajj and 'Umrah. When entering Makkah circle the Ka'bah seven times with Idtiba' for

¹¹⁷ Ibn 'Abbas رضي الله عنه narrates that Rasulullaah ﷺ said, "An 'Umrah in Ramadan equals a Hajj." [Muslim]

'Umrah. Make Ramal in the first three and then at a normal pace in the remaining four. Then make Sa'y between as-Safa and al-Marwah for 'Umrah. Those are the acts of 'Umrah. Then make Tawaful Qudum followed by Sa'y between as-Safa and al-Marwah for Hajj as we explained in the Hajj of the Mufrid. Remain in Ihram until the Day of Tarwiyah when one will go to Mina and perform the Hajj just like the Ifrad described.

Question 585) Is there anything extra that the Qarin must do compared to the Mufrid?

A: Yes, it is Wajib upon him to slaughter a Hady after pelting the Biggest Jamrah on the Day of Nahr. He will slaughter a sheep or a seventh of a Budnah in gratitude to Allaah for allowing him to join the two acts of Hajj and 'Umrah. He will then only shave or clip his hair. He is then released from both Ihram at the same time just as he had entered both at the same time. He is not allowed to shave or clip except after the slaughter. All restrictions are now lifted from him except the restriction of women which is only lifted after Tawafuz Ziyarah.

Question 586) What does he do if he does not have money to buy a Hady?

A: He will fast three days during Hajj, the last day being the Day of 'Arafat. He will then fast 7 days when he returns home. That completes 10.

Question 587) What is the ruling if he missed a day of fasting and it is already the Day of 'Nahr?

A: He has no option now except slaughter of a Hady.

Question 588) Is it allowed to fast the remaining 7 whilst still in Makkah i.e. before returning home?

A: Yes.

Question 589) What is the ruling of one who entered Ihram of Hajj and 'Umrah but did not enter Makkah but he went straight to 'Arafat?

A: When he makes Wuquf at 'Arafat he has dropped the 'Umrah and does not have to slaughter the Hady of Qiran. He must pay Damm for omitting the 'Umrah and must make Qada of it as well.

Tamattu'

Question 590) What is Tamattu'?

A: It is to enter Ihram at the Miqat and then go to Makkah and perform 'Umrah during the months of Hajj. He will stop Talibiyah when commencing Tawaf. After Tawaf he will make Sa'y. After shaving or clipping his hair he is out of the Ihram of 'Umrah. He will remain at Makkah without Ihram and will make as many Tawaf as he can. He will pray the 5 Salah in congregation in al-Masjid al-Haram. He will then enter Ihram of Hajj in the Haram on the Day of Tarwiyah. He will perform his Hajj just as the Mufrid. After pelting the Biggest Jamrah on the Day of Nahr he will slaughter a Hady out of gratitude to Allaah for allowing him to join the Hajj and 'Umrah. If he cannot afford it then he must fast three days in Hajj, the final day being the Day of 'Arafah. He will also fast 7 days when he returns home. He will not shave his head until he has slaughtered. We have mentioned certain rules of the fast under Qiran.

Question 591) What do you say about someone who entered Ihram of 'Umrah and brought his Hady with him?

A: There are two kinds of Mutamatti'. One who does not bring a Hady, and we have described his Tamattu'. The other is the one who makes Ihram of 'Umrah only at the Miqat and goes to Makkah with his Hady. If it is bovine he will tie a bag or sandal around its neck. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله, Ish'ar is done on camels. The famous narration from Imaam Abu Hanifa رحمته الله is that it is Makruh because people started to exceed the bounds. It is the slitting the hump from the right. When he enters Makkah he will make Tawaf and Sa'y of 'Umrah. He will not leave his Ihram but will continue in that state. On the Day of Tarwiyah he will renew his Ihram and do his Hajj as a Mufrid does. He will slaughter the Hady after pelting the Biggest Jamrah. He will then shave or clip his hair. Upon that he will be free of both Ihrams.

Question 592) If the Mutamatti' advances his Ihram and enters Ihram before the Day of Tarwiyah, is it allowed?

A: Yes, that is also Tamattu'.

The Months of Hajj

Question 593) What are the months of Hajj?

A: Shawwal, Zul Qa'dah and the first ten days of Zul Hijjah.

Question 594) The rites of Hajj are during five days. Why have Shawwal and Zul Qa'dah been made months of Hajj?

A: Because certain laws apply then. One of these are that if one entered Ihram of 'Umrah and completed most of the circuits of the Tawaf before the new moon of Shawwal set in, then one will not be a Mutamatti'. Another is that it is Makruh to enter into Ihram of Hajj before the new moon of Shawwal.

Question 595) Someone entered into Ihram of 'Umrah during Shawwal or Zul Qa'dah. He completed the rites of 'Umrah. He went home and returned for Hajj. What is the status of his Tamattu'?

A: His Tamattu' is void in this scenario if he is not bringing a Hady. He will not give Damm of Tamattu'. This is because Tamattu' is the joining of Hajj and 'Umrah in a single journey. By going home in between it is no longer in a single journey.

Who may not join Hajj and 'Umrah

Question 596) Can the people of Makkah perform Qiran and Tamattu'?

A: No. The people living within the Miqat – the people of Makkah, the Haram and the Hill may not perform Qiran and Tamattu', only Ifrad.

Violations of Hajj and 'Umrah

Question 597) What is a Jinayah [violation] in Hajj and 'Umrah?

A: There are two kinds:

1. Violating the restrictions of Ihram.
2. Violating the actions of Hajj and 'Umrah, such as leaving a Wajib, mixing the order, delaying a Fard or Wajib from its time.

Question 598) Explain the violations of Ihram.

A: They are 8:

1. For men to wear stitched clothing.
2. For men to cover their heads.
3. For men and women to cover their faces.
4. To apply fragrance on the body, clothing or bedding.
5. Shaving or clipping hair from any part of the body.
6. Cutting the nails.
7. Hunting a land animal, indicating or showing where it is.
8. Sex and its preludes such as kissing and touching with lust.

Wearing stitched clothing

Question 599) Explain the details of the violation of wearing stitched clothing and its penalties.

A: If a Muhrim wears stitched clothing; that is clothing which is normally worn as in conformity with the body or a part of the body, whether deliberately or forgetfully or by mistake; whether willingly or by force; whether with or without an excuse then there is a penalty.

Question 600) What is the penalty?

A: He must pay Damm if he wore it for a day or a night or the duration of one of the two; i.e. he must slaughter a sheep¹¹⁸ in the Haram.

Question 601) What is his penalty if he wore it for less than that?

A: Sadaqah like Sadaqah of Fitr if he wore it for at least an hour, if less then a handful of wheat.

¹¹⁸ Damm is a Thani sheep free of defect. Thani will be discussed under Hady. Sadaqah for violations of Ihram is a half Sa' of wheat or a Sa' of dates/barley/ ains or their price.

Question 602) If he wore it for several days and nights will he pay a separate penalty for each day?

A: A single Damm will suffice. However, if he wore it again after the slaughter or continued to wear it then another penalty is due.

Question 603) If he wore different kinds of prohibited clothing at the same time for the duration of the day e.g. trouser and shirt does he pay multiple penalties?

A: No, a single Damm suffices.

Question 604) If he wore a shirt as a cloak or a lower-body garment; or wore a trouser on the upper part of his body, what is the penalty?

A: No penalty. The violation is to wear normal clothing in the normal manner.

Question 605) Is there a penalty for wearing an Izar or Rida with stitched intervals or edges?

A: No, that does not make them garments in the shape of the human body or organs. However, it is better that there be no stitching.

Question 606) What is the penalty for wearing stitched fragrant clothing for the duration of a day?

A: One Damm for the clothing and another for the fragrance.

Question 607) Is there a penalty for wearing shoes or socks?

A: Damm is Wajib if he wore them for a day or night or the duration of one. If he wore less than that Sadaqah is Wajib. The penalties are only if they covered the Ka'b, the protruding bone on the upper part of the foot.

Covering the Face and Head

Question 608) Explain the penalties for covering the face and head.

A: If the Muhrim covers his whole head or face or even a quarter of either one; or a Muhrimah covers her face or a quarter for a day or

At-Tashūl ad-Darūrī (Part 1)

a night or the duration of either, then Damm becomes Wajib. This is irrespective whether they did it ignorantly or knowingly, willingly or by force, by mistake, forgetfully or deliberately, wakefully or in sleep, with an excuse or without. If done less than the mentioned time or less than a quarter of the said organs then Sadaqah is Wajib.

Question 609) What is Wajib if the Muhrim covers his ears, or nape, or the part of his beard below the chin?

A: Nothing.

Question 610) What is he covers his head with a metal sheet or stone or wood?

A: There is no penalty. The restriction is on wearing that which is normally considered a covering such as a cap, turban, hanky etc.

Question 611) Is there a penalty if he puts his head under the covering of the Ka'bah?

A: No. However, if the covering covers his head or faces it is Makruh.

Fragrance on the body or clothing

Question 612) What is the penalty if the Muhrim/ah applies fragrance on the body?

A: Damm is Wajib if fragrance is applied to a complete organ or more. If on less than a complete organ then Sadaqah is Wajib. By organ is meant for example the head, thigh, calf, lower arm and upper arm. This is if the fragrance is a little. If it is much then Damm is Wajib even if it is on less than an organ. The custom of the people will determine what is meant by a little and a lot. These apply to large organs as mentioned. As for smaller organs like fingers, ears and eyes, then the ruling is on the least of what is Wajib in the big organ regarding Damm or Sadaqah.

Question 613) If fragrance was applied to the entire body, are there multiple penalties?

At-Tashūl ad-Darūrī (Part 1)

A: If done at a single time then there is one Damm. If done in multiple sittings then the Damm must be added up according to the number of sittings.

Question 614) What is the ruling if a woman applied Hinna to her hand?

A: Damm is Wajib for that as well.

NOTE: There is no condition in fragrance that an amount of time has to pass. Thus if the fragrance was applied and immediately washed off, the Damm or Sadaqah as applicable, is due. As opposed to clothing, where Damm is payable when worn for the mentioned duration.

Question 615) What is the penalty for the Muhrim who applies fragrance to his clothing?

A: Damm is Wajib if he applies it to the clothing he is wearing or clothing he then puts on; and the applied area is more than a hand-span by a hand-span; and the time he wears it is complete day or night. If it is a hand-span by a hand-span then and he wears it for a day or night then he must pay Sadaqah. If less than that then a handful of wheat. This is if the fragrance is little. If it is a lot then Damm is Wajib even if the less than a hand-span of the cloth was afflicted. [Raddul Muhtar (201/2)]

Question 616) What is the penalty for applying scented oil?

A: It is the same as fragrance. Thus if he applies it on his head, Damm is Wajib.

Cutting the nails

Question 617) What is the ruling of a Muhrim cutting his nails?

A: If he cuts the nails of his hands and feet, or the nails of one hand or one foot in one sitting then one damm is Wajib. If he cuts all the nails of the hands and feet in separate sittings, then there is a separate penalty for each sitting.

Question 618) What is the ruling for cutting less than 5 nails?

A: Sadaqah for each nail.

Question 619) Whats is the ruling of cutting 5 nails from separate places e.g. 2 nails from each hand and one from a foot?

A: There is Sadaqah there also according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله.

Shaving hair

Question 620) What is the penalty upon the Muhrim for shaving his hair?

A: Damm is Wajib if he shaves his head or beard or a quarter of either. For less than a quarter the penalty is Sadaqah. If he shaves his armpits or pubic hairs then Damm is Wajib. **Shortening the hair and shaving it is the same in regards Damm and Sadaqah.** If it removed in some other way, or plucked out or combed out then it is the same as ruling as shaving.

Question 621) What is the ruling if the area of cupping was shaved on his neck?

A: Damm according to Imaam Abu Hanifa رحمته الله and Sadaqah according to his two companions.

Question 622) What is the ruling upon a woman in that?

A: The ruling as above in shaving the armpits, pubic area and head is the same for a woman as for a man.

NOTE: The penalties are equally applicable whether he did it himself or someone else; with or without his order; willingly or forced; ignorantly or mistakenly; forgetfully or deliberately.

Those excused from these restrictions

Question 623) What is the ruling of one who wore stitched clothing; applied fragrance; covered his head or face; shaved his head; or clipped his nails for a valid reason?

A: If the Muhrim violates any of these restrictions for a reason, e.g. he was afflicted with fever, there was severe heat or cold, headache or excessive lice then he has a choice in every situation wherein Damm is Wajib to either slaughter a sheep in the Haram or give Sadaqah of 3 Sa' of wheat, or 6 Sa' of raisins/dates/barley to 6 Miskin; giving each of them a half Sa' of wheat or a Sa' of raisins/dates/barley; or he can fast 3 days.
The rule applies equally to rich and to poor.

If the violation required Sadaqah instead, and he had a reason, then he has a choice Sadaqah of half Sa' of wheat or fasting a day.

Sex and its incitements

Question 624) Explain the violations of Ihram concerning sex.

A: They are as follows:

1. If a Muhrim of Hajj or 'Umrah kisses or touches a woman or beardless boy with lust, then he must pay Damm, whether he ejaculated or not.
2. If a Muhrim of Hajj has vaginal or anal sex before the Wuqf of 'Arafat his Hajj is void and he must slaughter a sheep. He will continue the actions of Hajj as if he is still in Hajj and will perform Qada after that year.
3. If the Hajj had sex after the Wuqf of 'Arafat, before Tawafuz Ziyarah and before he shaves his head, then he has to slaughter a Badnah and his Hajj is not void.
4. If he had sex after shaving his head, before Tawafuz Ziyarah; or after Tawafuz Ziyarah but before shaving, then he must slaughter a sheep.
5. If a Muhrim of 'Umrah has sex before completing 4 circuits, then his 'Umrah is void. He must make Qada and slaughter a sheep.
6. If a Muhrim of 'Umrah has sex after completing 4 circuits, then his 'Umrah is not void. He need make Qada but must slaughter a sheep.

Question 625) Is there a difference between having sex deliberately and forgetfully?

A: No. The ruling is the same.

Question 626) If the Hajj is going to make Qada of the Hajj he nullified, is he obligated to separate from his wife in that journey?

A: No.

Violations of the acts of Hajj

Question 627) Explain the violations of the acts of Hajj.

A: There are several kinds of violations. These include Tawaf without Taharah; omitting a Wajib; mixing the order; and delaying a Rukn or Wajib from its time. The details are as below.

Tawaf of a Muhdith or Junub

Question 628) What is the penalty for making Tawaf without Taharah?

A: The details are:

1. If the Hajji makes Tawaful Qudum or Tawafus Sadar and he is Muhdith then he must pay Sadaqah of a half Sa' of wheat for every circuit. The same rule applies to any Nafil Tawaf.
2. If the Hajji makes Tawaful Qudum or Tawafus Sadar and he is Junub, or a woman who is in menses or childbirth periods then they must slaughter a sheep.
3. If the Hajji makes Tawafuz Ziyarah and he is Muhdith then he must slaughter a sheep.
4. If the Hajji makes Tawafuz Ziyarah and he is Junub, or a woman who is in menses or childbirth periods then they must slaughter a Badanah [camel].

NOTE: If he made Tawaf while Muhdith or Junub and then repeated the Tawaf with Taharah, then the penalty is dropped.

Omitting a Wajib act of Hajj.

Question 629) What is the penalty for omitting a Wajib act of Hajj?

A: It is as follows:

1. One who omits Wuquf at al-Muzdalifah after dawn must pay Damm.
2. One who omits Sa'y between as-Safa and al-Marwah must pay Damm.
3. He who omits the pelting of the Jimar on all the days or the pelting of the Biggest Jimar on the Day of Nahr; or omitted most of the pebbles on a given day of pelting; must pay Damm in each of these scenarios. If in a day he left out one of the three Jimar then he must pay Sadaqah.
4. He who leaves 'Arafat before sunset must pay Damm unless he returns before sunset.
5. He who leaves out Tawaful Wida' or 4 circuits of it must pay Damm. If he omitted 3 then he must pay Sadaqah. The penalty is dropped if he returns to Makkah and makes Tawaful Wida'.

Mixing the order

Question 630) What does the Muhrim do if he mixed the Wajib order?

A: It is as follows:

1. If Mutamatti' or Qarin slaughters before pelting the Biggest Jamrah or shaved before slaughter then he must pay Damm.
2. If a Mufrid shaved before pelting the Biggest Jamrah then he must pay Damm.

Delay

Question 631) What delay makes a penalty Wajib?

A: It is as follows:

1. Damm is Wajib when a Mutamatti' or Qarin delays his slaughter after the Days of Nahr.
2. Damm is Wajib if any Hajji delays his shaving or clipping after the mentioned days.

NOTE: Women will never be allowed for a Hajji until he performs the complete or most of the Tawafuz Ziyarah.

Violations of 'Umrah

Question 632) What are the violations of 'Umrah?

A: It is as follows:

1. Damm is Wajib if he delayed entering Ihram to after the Miqat.
2. Damm is Wajib if one made Tawaf of 'Umrah as a Muhdith or Junub; or a woman was in her menses or childbirth period. There is no difference here between the Muhdith or the Junub, between a little and a lot. The Damm is Wajib if even a single circuit was made without Taharah.
3. Damm is Wajib if he shaved before Sa'y.
4. Damm is Wajib if he shaved his head outside the Haram.

NOTE: The penalty of Damm or Sadaqah for violating Ihram is the same whether it was Ihram of Hajj or 'Umrah.

Hunting in Ihram

Question 633) Is there a penalty of a Muhrim of Hajj or 'Umrah kills a prey?

A: There is a Wajib penalty upon a Muhrim who kills a prey; shows someone where the prey is; or even indicates to a hunter. The forgetful one, deliberate one, beginner and repeat offender are all equally liable.

Question 634) What is the penalty?

A: According to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله the prey will be evaluated in the place it is killed or the nearest place if it was on land. Two just Muslims will do the evaluation. The killer then has a choice between buying at that price a Hady to slaughter in the Haram or to buy food to give as Sadaqah to the Miskin. He will give each Miskin a half Sa' of wheat or a Sa' of dates/barley. If he wishes he can instead fast one day for each half Sa' of wheat or one Sa' of barley. If there was extra food less than a half Sa', he may give it as Sadaqah or he may fast a full day in lieu. The ruling is the same for a small prey which does not reach the value of a full Hady.

Question 635) Does Imaam Muhammed رحمته الله bin al-Hasan have a different view?

A: Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله rule according to monetary evaluation and then a choice as discussed above. Imaam Muhammed رحمته الله declared that the prey's equivalent animal be used where such exists. Thus the penalty of a deer or hyena will be a sheep; a kid for a rabbit; a Budanah for an ostrich and a lamb for a jerboa. As for that which does not have a physical equivalent then his ruling is the same as the two Imams.

Question 636) What is the ruling if the Muhrim wounds the prey, plucks its hair or cuts a limb?

A: He is penalised the value of the damage caused.

Question 637) What is the ruling if he plucked the feathers of a bird or cut the legs of an animal?

A: If the animal then escapes from his sole control then he is penalised with the full price.

Question 638) If he breaks the egg of a prey?

A: If a dead chick emerges then the penalty is equivalent had it been alive. If there was no chick in it then he is penalised the value of the egg.

Question 639) What is the penalty for killing lice or locusts?

A: He can give what Sadaqah he wishes. A date is more than a locust.

Question 640) What is the ruling of killing a beast whose flesh is not eaten?

A: The penalty is imposed on him, except that it will not exceed the value of a sheep.

Question 641) Is there a penalty if the beast attacked the Muhrim who then killed it?

A: No.

Question 642) Are there any animals or birds the Muhrim is allowed to kill?

A: He may kill crows, vultures, wolves, snakes, scorpions, rats and vicious dogs.

Question 643) What is the penalty for killing mosquitoes, fleas and apes?

A: Nothing.

Question 644) If the Muhrim is forced to eat the flesh of prey and kills it for that purpose, is there still a penalty upon him?

A: Yes.

Question 645) What do you say about a dove with striped hindquarters or a tame deer?

A: There is still a penalty for killing them.

Question 646) If a Muhrim slaughtered a prey, may a non-Muhrim eat from it?

A: The slaughter of a Muhrim is carrion. It is not permissible for him or anyone else.

Question 647) Can a Muhrim slaughter that which people usually slaughter to eat?

A: Yes, a Muhrim may slaughter a sheep, cow, chicken and duck. He and others may eat from these animals if he slaughtered them.

Question 648) A non-Muhrim hunted and killed a prey. Can the Muhrim eat from it?

A: He can eat from it if he did not show the hunter where it is nor ordered him to hunt it.

Question 649) What is the penalty if two Muhrim joined to kill a prey?

A: Each will pay the full penalty.

Question 650) If a Muhrim killed a prey and then sold it while in Ihram; or bought it from a Muhrim or a non-Muhrim; what is the ruling?

A: His selling is valid, his buying is void.

The violations of a Qarin

Question 651) What is the ruling of a Qarin who violates the Ihram?

A: He has to pay 2 Damm, one for violating the Hajj Ihram and one for the 'Umrah Ihram.

The exception is if he crossed the Miqat without Ihram and then later entered into Ihram of Hajj and 'Umrah, then he is only liable for one Damm in that case.

Crossing the Miqat without Ihram

Question 652) What is the ruling of one who does not enter Ihram at the Miqat and intends entering Makkah?

A: If an Afaqi Muslim who is Mukallaf [Responsible for obeying Shari'ah] intends going to Makkah or enter the Haram, even if it is only for business or tourism, and he crosses the Miqat by land, sea or air without Ihram, then whether he later enters Ihram or not he has sinned and must pay Damm.¹¹⁹

¹¹⁹ Ibn Hajar said in *Fathul Bari*,: Malik has quoted the narration of Ibn 'Umar in his *Muatta* from Nafi', "'Abdullaah bin 'Umar left Makkah. When he reached Qadid news of trouble reached him and he returned to Makkah without Ihram." In short he regarded Ihram only for one intending Hajj or 'Umrah based on the narration of Ibn 'Abbas رضي الله عنه, "He who intends Hajj and 'Umrah...." This means that one going to Makkah without intending Hajj or 'Umrah does not need Ihram. The 'Ulama have differed about this. The famous view of ash-Shafi'i is that it is not Wajib.... The famous view of the other three Imams is that it is Wajib in all circumstances. There are narrations from all of them that it is not Wajib. This is the view of Ibn 'Umar, az-Zuhri, al-Hasan and the Ahluzh Zahhir.... Ibn 'Abdil Barr claimed that most Sahabah رضي الله عنهم and Tabi'in said that it is Wajib.

Question 653) Is there a way out of the sin and Damm?

A: If one crossed the Miqat without Ihram, it is necessary to return to the Miqat, whether the one he crossed (which is best), or the closest one or even the furthest away. When he then enters Ihram for Hajj or 'Umrah at the Miqat, the sin and Damm will lapse.

Ibn Qudamah said: A Mukallaf who enters without reason of battle or recurring need may not pass the Miqat without Ihram. This is the view of Imaam Abu Hanifa رحمته الله and some of the companions of ash-Shafi'i. Others say, "Ihram is not Wajib." There is a narration from Ahmad indicating that as well.... So the Mukallif should return to the Miqat and enter Ihram. If he does it after the Miqat he must pay Damm like one going for Hajj or 'Umrah.

I say: When it is the Mazhab of Imaam Abu Hanifa رحمته الله, Malik and Ahmad and a narration of ash-Shafi'i and the view of most Sahabah رضي الله عنهم and Tabi'in that be in Ihram when intending to enter Makkah, even if it be without intending Hajj or 'Umrah; then one should enter into Ihram of Hajj or 'Umrah when intending to go to Makkah, especially 'Umrah when not Hajj time. Yes, if we make an exception for people who have to constantly enter and exit such as those who have to earn for their families, we can deduce from the issue of wood-gatherers and this has some kind of basis. As for those who do not have to constantly enter and exit and go beyond the Miqat, they are not like wood-gatherers and must enter Makkah with Ihram.

Those who do not accept deduction from deduced opposite meaning do not accept that Ihram is not Wajib based on, "Whoever intends Hajj and 'Umrah..." Then at-Tahawi narrates that the Narrator, Ibn 'Abbas رضي الله عنه, also gave Fatwa that no trader or one coming for a need may enter Makkah without Ihram. More than 100,000 Sahabah رضي الله عنهم entered Makkah with the Nabi صلى الله عليه وسلم upon the Conquest of Makkah [Awjazul Masalik] yet the majority of Sahabah held that one must enter with Ihram and did not use that incident as proof. They recognised the difference between need and no need.

The Conquest of Makkah was a special case where permission was granted to enter without Ihram due to the realities of fighting. Al-Bukhari narrates that Rasulullaah صلى الله عليه وسلم said, "If anyone seeks licence from the fighting of Rasulullaah صلى الله عليه وسلم then say to him, 'Allaah permitted His Rasul and did not permit you.' I was given permission only for a while in the day."

As for Ibn 'Umar رضي الله عنه entering without Ihram, he went till the Hill and did not pass the Miqat and thus did not need to enter Ihram when he returned to Makkah.

Question 654) What is the penalty if he does not return to the Miqat and enters Ihram for Hajj or 'Umrah in the Hill or Haram?

A: The sin and Damm remains. He must seek forgiveness from Allaah and repent. He must slaughter a sheep in the Haram – his Damm.

Question 655) A man crossed the Miqat without Ihram. He fears that if he returns to the Miqat he will miss the Hajj and therefore enters Ihram where he is. What is the ruling?

A: He should not return in that circumstance, but should slaughter a sheep for his violation of crossing the Miqat without Ihram. He must seek forgiveness from Allaah and repent.

Question 656) A man crossed the Miqat without Ihram. He fears for the safety of his life or wealth if he returns to the Miqat and therefore enters Ihram of 'Umrah where he is. What is the ruling?

A: It is no longer Wajib to return to the Miqat. Slaughtering the sheep in the Haram will suffice.

Question 657) A man enters Makkah or the Haram several times without Ihram. What is the ruling?

A: If he enters Makkah or the Haram without Ihram then for every entry he must make a Hajj or 'Umrah [which now becomes Qada]. If in the same year he enters Ihram for the Hajj or a vowed Hajj or Qada or vowed 'Umrah or Qada or Sunnah 'Umrah or Mustahab 'Umrah; that will suffice him for his Qada of entry whether he made intention or the Qada or not. If he does that in the next year then he must make intention.

Question 658) An Afaqi comes from a journey to the Miqat at Jaddah. He does not intend Hajj or 'Umrah, not entry into Makkah or the Haram. What is his ruling?

A: There is no sin or penalty upon him.

Question 659) If after coming to Jaddah he then wishes to enter the Haram or Makkah, what must he do?

A: In this scenario it is permissible for him to enter Makkah or the Haram without Ihram. If he intends Hajj or 'Umrah after reaching Jaddah, then he must enter Ihram from Jaddah or any place in the Hill.

Question 660) Are the people of the Miqat or Hill allowed to enter the Haram or Makkah without Ihram?

A: They are allowed to when they do not intend Hajj or 'Umrah. If they enter Makkah or the Haram without Ihram, and intended Hajj or 'Umrah, then Damm becomes Wajib upon them. They will have to return to their Miqat, which is the Hill. If they entered Ihram of Hajj or 'Umrah at the Haram and did not return to the Hill; or they did return but did not make Talbiyah there before beginning Tawaf, they are sinners and the Damm is still payable.

Question 661) Is one living in the Haram allowed to enter Ihram of 'Umrah in Makkah or the Haram?

A: No. For the people of the Haram, their Hajj Miqat is the Haram and their 'Umrah Miqat is the Hill. If they do not enter Ihram at their specified Miqat they have sinned and must pay Damm.

Violations of the Haram

Question 662) What are the violations of the Haram?

A: They are two:

1. Killing prey in it.
2. Cutting its trees and grass.

Question 663) What is the penalty for killing prey in the Haram?

A: He must give the value as Sadaqah to the poor. Fasting will not suffice.

Question 664) What is the penalty of two men out of Ihram who kill prey in the Haram?

A: Each is liable for a complete penalty.

Question 665) If a Muhrim kills a prey in the Haram is there a multiple penalty upon him?

A: No, the one penalty is incorporated into the other and the Sadaqah of the value of one prey will suffice.¹²⁰

¹²⁰ Whilst logic dictates that there be two penalties, the summary from *al-Kifayah* is that based on the juristic principle of Istihsan the prohibition of the

Question 666) What is the penalty of cutting or uprooting trees and grass of the Haram, whether by a Muhrim or non-Muhrim?

A: It is Wajib to give the value of the tree in Sadaqah if the tree does not have an owner and is not of the kind people plant.

Question 667) And if someone owns it?

A: The destroyer will have to pay its value in Sadaqah as the right of Shari'ah; and also the same price to its owner as his right. That is if it is not dry. If dry, then he only need to pay the owner and there is no further Shar'i penalty.

Question 668) Are there any exceptions?

A: Yes, it is allowed to cut Izkhir, a famous grass. Dry trees and grass can also be cut.

Question 669) Are these the rules for Muhrims or non-Muhrims?

A: It applies to both. The cutting of trees and grass is prohibited due to the Haram, not the Ihram.

Question 670) What is the ruling of two Muhrims cutting a tree on which there is a penalty?

A: The price of one is due on both.

Question 671) Can one make Miswak from the trees of the Haram?

A: No, unless it is a dry tree.

Ihsar [prevention from Hajj or 'Umrah]

Question 672) What should a Muhrim do in the case of Ihsar?

A: If a Muhrim falls ill or an enemy prevents him from continuing, he is allowed to terminate his Ihram.

Ihram is greater because it forbids hunting in the Hill and the Haram. Thus the greater prohibition already incorporated the lesser prohibition of hunting in the Haram.

Question 673) How does he do that?

A: If he is in the Haram then he should slaughter a sheep and shave or clip his hair. If he has not reached the Haram, then he should depute a man with a sheep or its price who will slaughter the sheep on his behalf in the Haram. They should stipulate an exact time when the sheep will be slaughtered. When it is slaughtered he will be out of Ihram.

Question 674) What should he do if he is Qarin?

A: He will pay two Damm if he is in the Haram. If not, he will send the two sheep to be slaughtered on his behalf after which he is released from both Ihram.

Question 675) Why must the sheep be sent to the Haram? Can he not slaughter wherever he is?

A: The slaughter is the Damm of Ihsar. It is not permissible except in the Haram.

Question 676) Can the Damm of Ihsar be made before the Day of Nahr?

A: According to Imaam Abu Hanifa رحمته الله, yes. His two companions say that the slaughter for Ihsar of Hajj can only be done on the Day of Nahr.

Question 677) What can one intending 'Umrah slaughter when he has been prevented?

A: He may slaughter when he wants, but it must be in the Haram. This is unanimous.

Question 678) After the prevented one [Muhsar] from Hajj has been released from Ihram does any other obligation remain?

A: Yes, he must make Qada of a Hajj and an 'Umrah. As for the Muhsar of 'Umrah he must make Qada of 'Umrah only.

Question 679) If a Qarin has been prevented, what must he do after release from Ihram?

A: A Hajj and 2 'Umrah.

Question 680) A Muhrim was prevented from Hajj. He sent someone to slaughter on his behalf, and then the prevention terminated. What should he do?

A: If he can afford a Hady and Hajj, then he is not allowed to leave the Ihram. He must continue the rites of Hajj. If he cannot afford the Hajj but can only afford the Hady then he may leave the Ihram. If he can only afford the Hajj and not the Hady then he may leave the Ihram but it will be better if he fulfils the Hajj.

Question 681) A man entered Ihram and reached Makkah. He was prevented from Wuquf at 'Arafat and Tawafuz Ziyarah. Is he classified as Muhsar?

A: Yes he is.

Question 682) Is the Muhsar prevented from either Wuquf of 'Arafat or Tawafuz Ziyarah?

A: The laws of Ihsar do not apply to him. If he is prevented from Tawafuz Ziyarah he will do his Wuqf and then do the Tawafuz Ziyarah when the Ihsar has ended. If he cannot do the Wuquf then he is like one who has missed the Hajj and must do as anyone else who has missed it.

Question 683) When the Hady is slaughtered, is it sufficient for his release from Ihram or must he first shave or clip his hair?

A: According to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله he is released from Ihram upon the slaughter. According to Imaam Abu Yusuf رحمته الله he must shave or clip to be released.

Fawat [Missed Hajj]

Question 684) What is the ruling of a Muhrim of Hajj who missed Wuquf of 'Arafat until dawn of the Day of Nahr?

A: His Hajj has been missed. He should remove his Ihram after doing the rites of 'Umrah i.e. He will make Tawaf, Sa'y and shave or clip his hair.

Question 685) Is there anything after that?

A: Yes, he must make Qada of the missed Hajj the next year.

Question 686) Is there Damm?

A: No.

Question 687) Is there such a thing as a missed 'Umrah?

A: No, because 'Umrah is not specified to a particular time. As we mentioned before, it is permissible throughout the year and Makruh for 5 days.

Hady

Question 688) What is Hady?

A: It is the animal slaughtered in Hajj and 'Umrah. Either the Muhsir slaughters it for release from Ihram, or the Mutamatti' or the Qarin slaughters it out of gratitude to Allaah for allowing the Hajj and 'Umrah to be joined. It is also slaughtered as compensation for violating the Ihram or omitting a Wajib of Hajj or 'Umrah. It may also be voluntarily slaughtered.

Question 689) What animal is the Hady?

A: It can only be camel, cattle or goat/sheep, no other animal. Male and female is allowed.

Question 690) Can any of the three categories be slaughtered as one wanted, or are there restrictions?

A: Yes, there are two conditions. The animal must be *Thani* or above; and must be free of defects.

Question 691) What is a *Thani*?

A: A *Thani* is a goat which has completed a year and is in its second year; or a calf which has completed 2 years and is in its third year; or a camel which has completed 5 years and is in its sixth year.

Question 692) Is a less than *Thani* sheep allowed?

A: Yes, a *Jaza'* or a sheep which has completed six months is allowed which is mixed with other *Thani* will seem to an onlooker like it is a *Thani*.

Question 693) What is the meaning of free of defect?

A: That all the organs be intact. Thus a Hady with a cut hoof, leg, ear or tail is not valid; nor one which has lost an eye; nor an insane animal; nor a cripple which cannot walk to the place of slaughter.

Question 694) Can an animal which has only a part of an ear or tail cut off be used as a Hady?

A: If most of the ear or tail is cut off then it is not a valid Hady.

Question 695) Can one slaughter the Hady wherever one wishes?

A: The slaughter is not valid anywhere besides the Haram.

Question 696) In what circumstances are camels and cattle specified for slaughter?

A: A complete camel or cow must be slaughtered as compensation for making Tawafuz Ziyarah as a Junub and not repeating the Tawafuz Ziyarah. It is also the compensation for one who had sex after Wuquf at 'Arafat but before shaving and before Tawafuz Ziyarah. In these two scenarios only a cow or camel will suffice. In all other cases a sheep will suffice, be it for Damm of Ihsar, Damm of Tamattu', Damm of Qiran, Damm of violations; or simply voluntary Hady.

Question 697) Can more than one person share in the slaughter of certain Hady?

A: Yes, up to 7 people can share in a camel or cow on condition that all 7 intend it as a worship.

Question 698) What is the ruling of 7 people sharing in a Hady and one of them has only made intention of the meat?

A: The Hady is not valid for any of them.

Question 699) Can the meat of Hady be eaten?

A: The owner of the Hady can eat from voluntary Hady, Tamattu' and Qiran. It is not allowed for him from Damm of Ihsar and Damm of violations.

Question 700) Is there a specified time for slaughtering Hady?

A: It is not permissible to slaughter Hady of Tamattu' and Qiran before the Day of Nahr. It must be slaughtered on the Day of Nahr or the two days thereafter. He may not delay the slaughter of the Hady after the 12th of Zil Hijjah. He may not slaughter before pelting the Biggest Jamrah on the Day of Nahr. It is allowed to slaughter for Damm of Ihsar and violations at any time.

Question 701) What is the ruling of delaying the Hady of Tamattu' or Qiran after the Days of Nahr?

A: In addition to the delayed Hady, he must slaughter another Hady for the delay.¹²¹

Question 702) Is it Wajib to give the meat of the Hady as Sadaqah to the poor of the Haram?

A: No, it is not specified for the poor of the Haram. It is permissible to give the Sadaqah to those poor or others.

Question 703) Is it Wajib to take the Hady to 'Arafat?

A: No.

Question 704) What is the difference between Zabh [slaughter across the throat] and Nahr [spearing the throat]?

A: The Sunnah for camels is Nahr and for cattle and sheep it is Zabh. If done in the opposite it is permissible but Makruh.

Question 705) Is it Wajib to slaughter or make Nahr oneself?

A: No, someone else can so it. It is however better to do it oneself if one is capable.

¹²¹ If in addition he shaved before slaughter, then he will owe a third Hady as well for incorrect order.

Question 706) A man was bringing a camel and then was forced to ride it, may he do so?

A: He may ride it only if force to.

Question 707) May he use the milk of the sheep or camel he is bringing for slaughter?

A: He may not milk them. He should moisten the udders with cold water to stop the milk.

Question 708) If the Hady perishes on the way, what should he do?

A: If it was voluntary then he need not replace it. If it was Wajib then he must slaughter a substitute.

Question 709) What is the ruling if a defect afflicts the Hady which prevents its validity for slaughter?

A: If it is Wajib Hady then he must slaughter a substitute and may do with the defective one what he wants to. If it is a voluntary Hady then he should slaughter it despite the defect.

Question 710) What should he do if he was brining a Budanah and it was about to perish on the way?

A: If it was voluntary he should slaughter the camel and dip the sandals he hung around it in its blood. He should then place it on the hump as a sign that he left it for the poor. Neither he nor the wealthy may eat from it. If it was Wajib then he must substitute it and do with the original what he wishes.

Question 711) What is the ruling of hanging around its neck?

A: It is Mustahab for the voluntary Hady and Tamattu' and Qiran. Damm of Ihsar and violations should not have anything hanged around.

Question 712) What should he do with the blanket and rope of the Hady?

A: Give it away in Sadaqah.

Question 713) Can the slaughterer be paid his fee from the meat?

A: No. It must be given from his own funds. [Muslim and al-Bukhari, narration of 'Ali رضي الله عنه]

Kitabul Buyu' [Book of Transactions]

Question 714) What is Bay' [trade]?

A: An exchange of a commodity for a commodity with the happy consent of the transacting parties.

Question 715) How is a transaction contracted?

A: It is contracted by offer and acceptance when both speak in the past tense e.g. one says, "I have sold," and the other says, "I have bought."

Question 716) When one party has made an offer, does it become binding on the other party?

A: No. When one offers, the other has a choice. He may accept it in the same Majlis [sitting, gathering] or reject it. Once the second party accepts it, it becomes binding. Neither then has a choice.

Question 717) Why have you mentioned accepting in the gathering?

A: When an offer has been made and either moves from the gathering before the acceptance then the offer is void.

Question 718) Once the transaction has been completed, does the buyer have any further options?

A: Yes, if a defect becomes apparent in the goods he bought he has a choice. He may return then or he may take them. The buyer has the same option of returning or accepting as long as he did not see the goods.

Question 719) Is a transaction valid with deferred payment?

A: Transactions are valid with immediate payment and deferred payment if the period has been defined.

Question 720) A man sold goods. He pointed at it and did not declare the quantity, weight or measure. Or two men bartered goods and did not declare the quantity, weight or measure but each pointed at his goods. Are these two transactions valid?

A: Both are valid. Pointing out the goods or price does not require further defining for the validity of the transaction. Pointing out something is the most exact form of defining something.

Question 721) What is the ruling if the price was undefined in terms of amount and type of currency?

A: If the buyer said for example, "I have bought from you for silver/gold/Dirham/Dinar/wheat," and did not specify the amount or type, then the transaction is not valid. For the validity of the transaction the amount must be mentioned e.g. "I bought from you for X amount of Dirham." The description must also be mentioned, e.g. "Egyptian/Syrian; Pure/Alloyed."

Question 722) If only the description of the price was not given, e.g. he said, "I sell you this for 10 Dirham," and in the city there are several descriptions of money used, is the transaction valid if the buyer accepted?

A: Yes, the money will be defined as the one the people most commonly use in the city.

Question 723) The Dirham was left undefined and there are different kinds in terms of monetary value. Will the transaction be valid?

A: The transaction is incorrect unless one was defined and the amount is known.

Question 724) Is a sale of food and seeds in measure or amount valid?

A: It is permissible to sell it for Dirham/Dinar/currency/seeds. However, it is not allowed to sell a quantity of food for food of the same type because of the possibility of Riba [interest].

Question 725) A man said, "I am selling you this wheat to the extent that it fills this container." The buyer accepts although he does not know the exact amount the container can hold. Is this valid?

A: The sale of the specified container is valid even if he does not know the exact amount it will contain.

Question 726) If he buys equal to the weight of a specific stone, whose weight he does not know, what is the ruling?

A: That is also permissible.

Question 727) A man bought a basket of food, each Qafiz [a dry measure] for a Dirham. Is the transaction valid?

A: The transaction is only valid for 1 Qafiz and invalid for the rest, unless the total Qafiz had been stipulated. This is according to Imaam Abu Hanifa رحمته الله. His two companions say that it is valid in both cases, whether the total had been mentioned or not.

Question 728) What is the ruling of Imaam Abu Hanifa رحمته الله if someone sold a flock of sheep and said, "A Dirham per sheep."?

A: The entire transaction is incorrect according to him. His two companions say that it is correct in all.

Question 729) What did Imaam Abu Hanifa رحمته الله say about selling cloth for a Dirham per arm span and the total length had not been mentioned?

A: The transaction is incorrect in total as well as per arm-span.

Question 730) What do you say about someone who sold a basket of 100 Qafiz of food for 100 Dirham, the buyer then discovers that it is less than 100 Qafiz?

A: The buyer can either cancel the sale or pay the proportionate amount only.

Question 731) What is the ruling if he found it to be more than 100 Qafiz?

A: The extra amount must be returned to the seller.

Question 732) A man bought a 10 arm-span cloth for 10 Dirham; or he bought a 100 arm-span land for 100 Dirham. He then found the cloth or the land to be less than what the seller claimed. What is the ruling?

A: The buyer can either take it at the full price or cancel the sale.

Question 733) If he finds it to be more than what the seller claimed?

A: The cloth or the land is for the buyer at the stipulated price. The seller has no choice.

Question 734) What do you say if the seller had to say, "I am selling you this which is 100 arm-spans for 100 Dirham, each arm-span for a Dirham," and the item turns out to be more than that or less?

A: The buyer has a choice if it is less. He can take the item at the proportionate price or he can cancel the sale. If it is more than his choice is to take the total at a price of a Dirham per arm-span or he can cancel the sale.

Question 735) A seller says, "I am selling you this bundle of 10 cloths for 100 Dirham. Each cloth is 10 Dirham." What is the ruling if they are more or less than 10?

A: If it is less then the sale is valid at the proportionate price. If it is more then the sale is Fasid [invalid].

Question 736) A man sold a house and did not mention anything else. What else is included in the term "House"?

A: When a house is sold, it includes the courtyard, the building, the keys and locks, even if they were not specifically mentioned.

Question 737) What do you say about the sale of a land which has trees on it?

A: The trees are included in the sale, whether they were mentioned or not.

Question 738) What is the ruling if the land with crops was sold, but the crops were not mentioned?

A: The crops are not included in the sale of the land, unless otherwise stipulated.

Question 739) Someone sold a date-tree or other fruit-tree. Who owns the fruit?

A: The seller keeps the fruit, unless the buyer had stipulated otherwise. The seller must cut off his fruit and hand the tree over to the buyer.

Question 740) Is it permissible to buy unripe fruit which is still on the tree?

A: It is permissible to sell fruit which is on the tree – whether ripe or unripe – but the seller must immediately cut them off.

Question 741) What is the ruling if a condition of leaving the fruit on the tree was made?

A: The sale in Fasid.

Question 742) If the fruit was on the tree and was sold except for a specified Ritl [weight], what is the ruling?

A: The sale is Fasid.

Question 743) Is the sale of wheat in its sheathe and beans in its pods permissible?

A: It is allowed if sold for something of a different type. If sold for the same thing then it is not permissible due to the possibility of Riba [usury].

Question 744) Something was sold by weight or measured dimensions. It was so much that a measurer/scale had to be hired. Who bears the hiring fees?

A: The seller.¹²²

Question 745) The buyer offered Dirham/Dinar. The seller needed other currency and had it changed. Who bears the exchange fee?

¹²² Just as if a professional counter had to be hired.

A: The seller.¹²³

Question 746) The Dirham or Dinar were many and needed to be weighed. Who bears the fees of the weighing?

A: The buyer.

Question 747) Is it Wajib to give the goods first, or is it Wajib upon the buyer to pay first?

A: If paid for with money then the buyer must pay first. If goods are exchanged for goods or one currency for another, then they should exchange it simultaneously.

Khiyarush Shart [right of withdrawal]

Question 748) What is the ruling of right of withdrawal [khiyarush Shart] for the buyer and the seller?

A: It is permissible for either party.

Question 749) Is there a limitation to it?

A: Yes, three days or less. More than that is not allowed according to Imaam Abu Hanifa رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله more than that is allowed if the one with the right stipulates it and the other party agrees.

Question 750) Two men conducted a sale. The seller maintained the right of withdrawal for himself. The buyer took the goods which were then destroyed in his possession within the period of the right. What is the ruling?

A: In the principle the right being maintained by the seller prevents ownership from leaving him. The buyer thus took the seller's goods. If it perished in his possession during the period of the right he must replace it with the same kind of good if it is a standard good, and with the price if is not standard.

¹²³ The buyer according to the narration of Ibn Sima'ah from Muhammed.

Question 751) Does the ownership remain with the seller if the buyer maintains the right of withdrawal?

A: The buyer maintaining khiyarush Shart does not prevent the ownership from leaving the seller. According to Imaam Abu Hanifa رحمته الله ownership is not transferred to the buyer either in that case. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is.

Question 752) The buyer assumed khiyarush Shart and took possession of the goods. It perishes in his hands. Who is liable in this case?

A: The buyer is now liable to pay the seller the agreed upon price.

Question 753) The buyer has khiyarush Shart and has the goods. A defect develops. What is the ruling?

A: If the defect is irreversible e.g. a slave loses his hand; then it is as a perished good. The buyer must pay the price they had agreed upon. If it is reversible then he maintains khiyarush Shart for the period. Once the period passes the buyer can no longer return the goods. He is now liable for the agreed upon price even if the defect remained.

Question 754) What is the benefit of khiyarush Shart to the owner thereof?

A: He may either rescind the sale or confirm it within the period.

Question 755) Is it necessary to rescind or confirm the sale in the presence of the other party?

A: Confirmation can take place in his absence, but rescinding must be done in his presence.

Question 756) What can the buyer do if the seller sold him a slave claiming him to be a baker or scribe and he was not?

A: The buyer can keep him at the agreed price or he can cancel the sale and return the slave.

Question 757) The party with khiyarush Shart died before confirming the sale and before the period elapsed. Do his heirs inherit the right?

A: The right is terminated and cannot pass to the heirs. The sale is regarded as complete.

Khiyarur Ruyah [Right of sight]

Question 758) A man bought goods he did not see. Is the sale valid?

A: The sale is valid. However, the buyer maintains the right to cancel the sale or accept the goods when he eventually does see it. He may also cancel before seeing it.

Question 759) Is there a time limitation for this right?

A: No, it remains until there is any indication that the buyer is pleased with the goods.

Question 760) What do you say about a seller who did not see his goods?

A: He has no right of sight.

Question 761) The buyer saw the outside of a basket, the outside of a folded cloth, the face of a slave-girl or the face of an animal and took it. Is his right void?

A: This is deemed a sighting and he does not have a further right of sight.

Question 762) Is it deemed a sighting if he saw the courtyard of a house and did not see the rooms?

A: According to the writers of the original texts this is a valid sighting and he does not have further rights. This is however based on the fact that the houses in al-Kufah were all standard. Hence the Fatwa is on the view of Imaam Zufar رحمته الله that he must see the inside of the house, because rooms differ.¹²⁴

¹²⁴ *Al-Bahr* (32/6): The Fatwa is on this [Zufar]

Question 763) What is the ruling if a blind man buys or sells?

A: His transactions are valid and he maintains the right of sight when buying.

Question 764) How can he see when he is blind?

A: He will touch the goods when the goods are such that are recognised by touch. Similarly he will taste or smell the goods. These will substitute his seeing them.

Question 765) A blind man wishes to buy land. How will he recognise it?

A: The land will be described to him as there is no other way for him to recognise it. Once it is described and he is happy with it, his right has terminated.

Question 766) A man sold someone else's possession, without his authorisation. What is the ruling?

A: The owner can either confirm or rescind the sale. He may confirm the sale as long as the four parts of the sale exist – the buyer, the seller, the possession and the owner. If the owner dies before confirmation of the sale is rescinded and the heirs cannot confirm it. When the sale is rescinded the buyer must seek restitution from the seller not the owner.

Question 767) A man bought two robes in one sale. Can he return both if then sees one?

A: Yes.

Question 768) A man saw an item and bought it after some time has elapsed. Does his right of sight remain?

A: If the item remained as it was when he saw it he has no right. If he sees that it has changed then he has the right of sight.

Question 769) A seller who had right of sight dies. What happens to his right?

A: The sale is confirmed and the right becomes void. It is not transferable to the heirs.

Khiyarul 'Ayb [Right of defect]

Question 770) A man bought an item and then discovered a defect which existed when in the hands of the seller. Can he return it?

A: If the buyer did not see the defect at the time of purchase, nor at the time he took possession, nor did the seller tell him of it; then he has a choice. He may accept it at the full price agreed or he may return it.

Question 771) Can the buyer not keep it and reduce the price as per the defect?

A: No.

Question 772) What is deemed a defect in these Masail?

A: Whatever will necessitate a reduction in price in the practice of traders is deemed a defect.

Question 773) Give some examples of defects which permit a return of the goods by the buyer.

A: A slave who runs away or urinates in the bed. A child who steals is defective, once he attains puberty it is no longer a valid defect. A slave girl who sweats and stinks. That is not a defect for a slave unless due to an illness. Fornication and being illegitimate are defects in slave-girls not slaves.

Question 774) A defect occurred in the possession of the buyer then he learns of a defect which already existed in the hands of the seller. What can he do?

A: He may seek a reduction for the defect in the good, but he may not return it to the seller unless the seller is willing to accept the new defect.

Question 775) A man bought a cloth and cut it, stitched it or dyed it. Or he bought cereal and mixed it in butter. He then discovered a defect which existed in the hands of the seller. What is the ruling?

A: He may seek a reduction for the defect in the good, but he may not return it to the seller unless the seller is willing to accept it as it is.

Question 776) What do you say about a man who bought a slave and freed him or the slave died, he then learns of a defect that was in the hands of the seller?

A: He may receive a reduction for the defect, but may not return it because there is nothing to validly return.

Question 777) If the buyer killed the slave or he bought food and ate it.

A: According to Imaam Abu Hanifa رحمته الله he does not receive anything. According to his two companions he will receive a reduction for the defect.

Question 778) A man sold a slave and then the buyer resold it. The second buyer returned him to the first buyer because of a defect. May he return the slave to the first seller?

A: If the second seller i.e. the first buyer is forced by a court ruling to take the slave back then he may return him to the first seller. If he accepted the slave without a court ruling then he may not.

Question 779) A man bought a slave. The seller said, "I am absolved of all defects." The buyer then finds a defect. Can he return the defective good?

A: He may not, even though the seller did not list all the possible defects.

NOTE: Cheating and hiding defects are Haram. Muslim narrates from Abu Hurayrah رضي الله عنه that Rasulullaah ﷺ passed by a basket filled with food. He entered his hand in it and his fingers emerged wet. He said, "What is this, O owner of the food?" "It rained on it, O Rasulullaah," he said. Rasulullaah ﷺ said, "Why did you not place it on top of the food so that people can see it? He who deceives is not of us."

Ibn Majah narrates from Wathilah bin Asqa' رضي الله عنه saying, "He who sells a defective product and does not expose the defect is eternally under the anger of Allaah."

Fasid, Batil and Makruh transactions (Imperfect, incorrect and detested)

Question 780) Explain the types of transactions in terms of correctness.

A: There are four kinds of transactions:¹²⁵

1. Sahih or valid: That which the Shari'ah recognises in its origin and in its description as correct. The transaction is in effect in itself if there are not any other prohibiting factors.
2. Batil or void: The Shari'ah does not recognise it in its origin. Under no circumstances can the transaction be in effect.
3. Fasid or incorrect: The Shari'ah recognises it in its origin, but not its description. It can take effect if the buyer takes possession of the goods. The Fuqaha have granted leeway for this category and sometimes apply the term Fasid for Batil.
4. Mawquf or suspended: such as when someone sells someone else's property. The transaction is suspended until the real owner validates it or voids it.

Examples and rulings of void transactions

Question 781) Explain Batil transactions concisely.

A: If one or both of the goods/price is Haram or not owned then the transaction is Batil.

Question 782) Give some examples.

A: The sale of something non-existent or that which has no monetary value is Batil such as blood and carrion [except fish and locust]; camel sperm, camel foetus, fruits which haven grown yet, an animal which was slaughtered and Bismillaah deliberately omitted, carrion hide before tanning, a slaughtered sheep joined with a sheep which died naturally, human hair [out of respect it is void], pig hair [due to its filth], human excreta for as long as it is not consumed by

¹²⁵ *Al-Bahr ar-Raiq:* There are 3 prohibited transactions

earth, selling that which the owner does not have in his ownership yet unless by means of Salam,¹²⁶ fish which has not yet been caught, birds in the air, milk still in the udder, pearls still in the oyster, wool still on the sheep, wine, pigs, a slave joined with a free man just as selling the grass on a pasturage is void.¹²⁷

Question 783) If the master sells his Ummul Walad [slave girl who gave birth to the master's child], or Mudabbar or Mukatab is the transaction valid?

A: All these transactions are void.¹²⁸

Question 784) A man lays a net/trap and says to another that whatever is caught is for the buyer at a given price. What is the ruling?

A: It is void. The prey was not in his possession at the time of the transaction.

Question 785) What do you say about a man who combined in a single sale a slave and a Mudabbar or his slave and someone else's slave?

A: The transaction is valid for his slave for a proportionate price. It is not valid for the Mudabbar and the other man's slave.

¹²⁶ Will be defined in a later chapter inshaAllaah.

¹²⁷ In view of the Hadith declaring it the common property of the people. Similarly it cannot be rented in that that will destroy a public possession. Most Mashaikh have however given permission when a man plants and waters it himself.

¹²⁸ Selling the Ummul Walad is like selling a free person because Rasulullaah ﷺ said, "Her child has set her free."

An aspect of freedom is created in the Mudabbar in the future death of the master. The sale of the general Mudabbar is void, not the sale of the conditional Mudabbar. The general Mudabbar is the one to whom the master said, "You are free after my death." The conditional Mudabbar is the one whom the master says to, "If I die on this journey/of this sickness then you are free."

A Mukatab is also entitled to freedom. If however he is pleased with being sold then it is allowed.

Question 786) What is the ruling of a Batil transaction?

A: The transaction is not contracted and the buyer does not assume ownership when he takes the goods.

The ruling of Fasid transactions and its examples

Question 787) Give some examples of Fasid [incorrect] transactions.

A: Muzabanah – selling dates on the tree in exchange for plucked dry dates; or grapes on the vine in exchange for raisins. Mulamasah – the sale is in effect by mere touching without sight of sight e.g. it was dark or the cloth was folded. There is also no right to withdraw within the gathering. Munabazah is that each throws his goods at the other and the sale is made. These were transactions which were regarded as correct before Islaam. Throwing a stone on a group of items. Whichever one it falls on is sold. Similarly selling an animal or slave-girl and excluding its foetus is Fasid. Selling an arms-span of a robe where it will cause damage to the whole big price as well for as selling a beam of a roof is incorrect. Or buying a [unspecified] robe out of two robes.

Question 788) Does setting preconditions make the transaction Fasid?

A: Yes, it is Fasid unless the condition is such which is needed for the transaction to reasonably take effect; it is suitable and there is a benefit for one party or the goods, or it is a condition he is entitled to, or it is known in the custom of the people, and if the Shari'ah has not forbidden these conditions.¹²⁹

Question 789) Give some examples which make the transaction Fasid.

A: If someone sold a slave on condition that he will set the slave free or make him Mudabbar or Mukatab; or the seller will use his

¹²⁹ Thus conditions like the seller will keep the goods until the buyer pays do not make the transaction Fasid or condition established by Shari'ah like Khiyarush Shart. Or conditions well known in that society e.g. the seller will keep the fruits of a sold tree.

services for a month; or he sells a slave-girl on condition that the buyer will seek to impregnate her; or a house on condition that the seller will inhabit it for a set time; or that he will not give the goods until the end of the month; or that the buyer will loan him a Dirham; that he must give him a gift. These conditions make the transaction Fasid.

Question 790) What do you say about a man buying a cloth on condition that the seller cuts it and makes it into a shirt; or a sandal on condition that the seller puts in laces/straps.

A: The transaction is Fasid.¹³⁰

Question 791) What is the ruling if the seller sets a condition that he will defer payment to the Persian feast of Nawruz or Mahrajan, or the fast of the Christians or the end of the fast of the Jews; and the seller accepts the condition?

A: It is Fasid unless both parties know when these dates will be.

Question 792) Is it permissible to set the time of payment until the harvest, or the milling of the wheat, or the plucking of the fruits, or the return of the Hajjaj?

A: The transaction is Fasid.

Question 793) They agreed to the above times then agreed to drop that condition before that time arrived. Is the transaction correct?

A: Yes, it has now become correct.

Question 794) Is the sale of dogs, cheetahs and beasts of prey permissible?

A: Yes.

¹³⁰ This is according to al-Quduri. The author of al-Bahr states that whilst logic dictates that the sandal transaction is Fasid for having a benefit to the buyer which is not necessary for the implementation of the transaction, the principle of *Istihsan* considers the ways of the people and that breaking that custom will cause difficulty. The cloth condition is however Fasid and is not the custom of people.

Question 795) What is the ruling of selling silkworms and bees?

A: The silkworm can only be sold with the silk.¹³¹ The bee can only be sold with its hive.

Question 796) What is the ruling of a Fasid transaction?

A: If they had entered into the Fasid transaction in which there is an exchange of goods having a monetary value, and the buyer takes the goods with the consent of the seller, the buyer becomes the owner and is liable to pay the seller. However, it is Wajib upon both of them to cancel the transaction in obedience to Shar i'ah.

Question 797) They did not cancel the Fasid transaction. In fact, the buyer sold the goods to a third party. Does the new sale take effect?

A: Yes.

Question 798) The buyer made a profit in selling the goods as above. What is the status of the profit?

A: The profit is not wholesome. He should give it away in charity.¹³²

Sundry Masail

Question 799) What is the ruling on auctions?

A: There is no harm in it. Rasulullaah ﷺ auctioned a bowl and a blanket. [Abu Dawud, narrated by Anas رضي الله عنه]

Question 800) Is the seller obligated to sell his goods at the last offered price in an auction?

A: No, he can choose.

¹³¹ According to Imaam Abu Hanifa رحمته الله the silkworm is a vermin and may not be sold at all. According to Abu Yusuf it can be sold by the way when it shows that it is producing silk. According to Muhammed upon whose view the Fatwa is, the silkworm can be sold under any circumstance since it has benefit.

¹³² The first seller however need not give away his profits.

Question 801) Do Kuffar living under Muslim rule have to observe Islaamic financial regulations in terms of validity and incorrectness of transactions?

A: They are bound just like Muslims, except in wine and pigs. Their transaction with wine is just like a Muslim's transaction with juice. Their transaction with a pig is like a Muslim's transaction with a sheep.

Makruh transactions

Question 802) Allaah says, "O you who believe, when the call is made for the Salah of the Day of Jumu'ah hasten to Allaah's remembrance and leave trade."

A: Thus trade from the Azan of Jumu'ah until the end of the Salah is prohibited. Rasulullaah ﷺ has also forbidden Najash [to increase a bid and raise the price for others without intending to buy it oneself]; offering a higher price after the seller had already accepted the buyer's offer; and a city person going out and buying the crops of the farmers as they come to the city; and city-folk taking the goods of farmers and selling it for themselves.

NOTE: If someone owns two child slaves who are blood relations of each other, then he may not separate them in a sale by selling each to different masters. If one is a child and the other an adult it would be Makruh to separate them but the sale would be valid. If they are both adults then there is no harm in separating them.¹³³

¹³³ Rasulullaah ﷺ said, "He who separates a mother from her child, Allaah will separate him from his loved ones on the Day of Qiyamah." Rasulullaah ﷺ gave 'Ali ؓ a gift of two small brothers. He asked, "What has happened to the brothers?" He said, "One is sold." Rasulullaah ﷺ said, "Join them. Join them."

This applies to relatives who cannot marry each other. Thus relatives who can marry or those who cannot marry but are not blood relatives are not included in this rule. Thus a cousin who is also a foster-brother would be included in the rule.

Iqalah [Rescinding]

Question 803) What is Iqalah? What is its status in Shari'ah?

A: It is the rescinding of a transaction after the buyer and seller had already completed it. It can only be rescinded with the consent of both parties and for return of the original price.

Question 804) What is the ruling if one of the two stipulates more or less than the original price?

A: The condition is void. The goods will be returned at the original price.

Question 805) Is Iqalah a cancellation of sale or a new sale?

A: It is a cancellation with regards the original parties and a new transaction with regards the rights of third parties. This is according to Imaam Abu Hanifa ؓ¹³⁴

Question 806) What is the status of the Iqalah when the product or the price perishes?

A: The perishing of the price does not prevent Iqalah, the perishing of the product does.

Question 807) Some of the goods sold perished. Can the sale be rescinded in the remaining goods?

A: Yes.

NOTE: To accept the request of the other party regretting the sale is Mustahab and entails great reward.¹³⁵

¹³⁴ e.g. A man had a right to buy a property first. He allowed it to be sold to someone else. The sale was then rescinded. The man again has a claim on the "new" sale.

¹³⁵ Shurayh ؓ narrates that Rasulullaah ﷺ said, "He who agrees to cancel the sale of his brother, Allaah will cancel his sins on the Day of Qiyamah." [at-Tabrani in al-Awsat].

Murabahah and Tawliyah (Selling at profit and cost)

Question 808) What is Murabahah and Tawliyah in the terminology of the Fuqaha?

A: Murabahah is to mention what was acquired at the higher price with a profit.

Tawliyah is to mention what was acquired at the acquired price without a profit.

Question 809) Are there conditions for the validity of Murabahah and Tawliyah?

A: Yes, the items must be such which have similar replacements e.g. they are products sold by volume or weight.

Question 810) A man bought a cloth for example. He washed it, dyed it and embroidered it. The price hence increased. Or he bought food and paid a porter to carry it. Or put a silk border on the cloth he bought. What is the method of Murabahah here?

A: Murabahah is allowed, but he may not say, "I bought it for so much," he must say, "This has cost me so much."

Question 811) A man bought an item on Murabahah, and then discovered that the seller lied to him. What is the ruling?

A: According to Imaam Abu Hanifa رحمته الله he may either accept it at the total price or return it.

Question 812) What can he do if he was cheated in Tawliyah?

A: If he thought the seller was true then he may reduce the excess from the price.

Question 813) Is there a difference amongst Imaam Abu Hanifa رحمته الله and his two companions in this?

A: Yes, Imaam Abu Yusuf رحمته الله said that the excess will be reduced from the price in both Murabahah and Tawliyah. They is no

option for rescinding. Imaam Muhammed رحمته الله said that in both cases he will choose between taking it at the price or rescinding the sale. There is no option of reducing the price.

Sundry Masail

Question 814) A man bought an item. Can he sell it before taking possession of it?

A: A movable item cannot be sold until it is in his possession. Unmovable items such as land may be sold before taking possession according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله. It is not permissible before taking possession according to Imaam Muhammed رحمته الله.

Question 815) Is it necessary for the buyer to measure or weigh the product again after taking possession?

A: If he bought a product according to volume which is sold per volume, or according to weight which is sold per weight then consuming it or selling it is Haram until he reweighs it.¹³⁶

Question 816) A man sold a product and did not yet take possession of the price. May he deal in the money before taking possession?

A: Yes.

Question 817) Can the price or the goods be increased after the transaction is concluded?

A: It is permissible if the buyer wishes to pay more or the seller wishes to give more.

Question 818) What is the ruling if the seller discounts the price after conclusion of the transaction?

A: It is also allowed.

¹³⁶ By Haram is meant Makruh Tahrimi. Jabir رحمته الله narrates that Rasulullah ﷺ forbade selling food until two scales have weighted, the scale of the first seller and the scale of the buyer. (Ibn Majah). It is also clear that if the items were bought by amount then there is no need for the double weighing.

Question 819) If in these scenarios of the buyer paying more, the seller giving more or charging less, is the difference now part of the parties' rights?

A: Yes.¹³⁷

Question 820) A man sold goods for immediate payment and then gave a set date for payment. What is the ruling?

A: It becomes a credit sale. Any amount payable for which the creditor grants terms becomes credit; except for loans because time is not factored in them.

Riba [Usury]

Question 821) What is Riba linguistically and in Shari'ah?

A: Linguistically it is an increase, in Shari'ah there are two kinds - trade Riba and loan Riba. Both are Haram. Severe warnings have been given against the giver and the taker.¹³⁸

¹³⁷ E.g. The buyer now cannot demand the goods until he pays the extra he offered. If the goods have to be returned they will be returned with the extra amount.

¹³⁸ Allaah says, "O you who believe. Do not consume Riba seeking to multiply. Fear Allaah that you may be successful." [Al 'Imran]

Allaah says, "O you who believe, fear Allaah and leave off what remains of Riba if indeed you are Believers. If you do not do this, then hear of the announcement of war from Allaah and His Rasul. If you repent then you have your capital. You will not wrong nor be wronged."

Rasulullaah ﷺ said, "Avoid seven destructive things." "What are they?" they asked. He said, "Shirk with Allaah, sorcery, killing a life Allaah has sanctified except with a right, consuming Riba, consuming the wealth of an orphan, fleeing from the battle and slandering chaste believing women who do not know vulgarity." [Muslim]

'Abdullaah bin Hanzalah whose father the angels bathed narrates that Rasulullaah ﷺ said, "A Dirhan of Riba which a man knowingly consumes is worse than fornicating 36 times." [Ahmad and ad-Darqutni]

Abu Hurayrah ﷺ narrates that Rasulullaah ﷺ said, "There are 70 degrees of Riba, the least of which is a man having intercourse with his own mother." [Ibn Majah]

Question 822) What is loan Riba?

A: A man lends someone Dirham or Dinar for example and stipulates that the borrower will return a greater amount to him.

Question 823) What is trade Riba?

A: Sale of a measured in volume or weighed product in exchange for a product of the same category [Jins] for an excess amount; or selling them on credit whether of the same category or not.

Question 824) Is there a narration from Rasulullaah ﷺ on that?

A: Abu Sa'id al-Khudri ﷺ narrates that Rasulullaah ﷺ said, "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt – the same for the same, hand to hand. He who increases or seeks increase has done Riba. The taker and the giver are equal in it." [Muslim]

'Ubadah bin as-Samit ﷺ narrates that Rasulullaah ﷺ said, "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt – the same for the same, amount for amount, hand to hand. If the categories differ, then sell as you wish when it is hand to hand."

Rasulullaah ﷺ mentioned these six things. He commanded that these things not be exchanged for something of the same category [Jins] unless it be of the same kind, equal amount and hand to hand. He declared that what is increased is Riba from whichever side it may be. He said, "The taker and the giver are equal in it. He allowed the exchange of these goods of another category [J-ins] whether in equal or differing amounts on condition that it is done hand to hand."

Anas ﷺ narrates that Rasulullaah ﷺ said, "If one of you gives a loan and a debtor offers him a gift or a ride on his mount, then he should not ride it or accept the gift – unless such a relation existed between them from before." [Ibn Majah]

'Abdullaah bin Salam ﷺ said to Abu Burdah, "Verily you are in a land of Riba. If any of your debtors offers you a gift of wheat, straw or anything utterly insignificant, do not take it for it is Riba." [al-Bukhari]

¹³⁹ Meaning, "Sell gold for gold...."

At-Tashīl ad-Darūrī (Part 1)

From this Imaam Abu Hanifa رحمته الله has established that Riba takes place from measured volume goods with its Jins and weighed goods with its Jins. These goods are either measured or weighed. Thus if a weighed item is exchanged for an item of the same category; or a measured good exchanged for a good of the same category – even if they are not of the specific six mentioned – and the exchange is for equal amounts, then the sale is correct. If there is an increase on either side then it is not allowed. If they are of different categories then an increase is allowed but not credit. When both criteria – measure/weight and Jins – are missing then both increase and credit are allowed.¹⁴⁰

When both criteria exist then an increase and credit are both Haram. If only one is found then an increase is allowed but credit is Haram.¹⁴¹

Question 825) Are differing amounts allowed between good wheat exchanged for lower quality wheat?

A: No, they are of the same category. This ruling applies to all measured and weighed products.¹⁴²

Question 826) How are categories defined as measured or weighed?

A: Whatever Rasulullaah ﷺ declared to be measured by volume in which excess is forbidden will be regarded as a measured product forever even if the people no longer measure them e.g. wheat, barley,

¹⁴⁰ Thus a Harawi cloth can be exchanged for 2 Marwi cloths on credit; and a walnut for an egg for credit because the prohibiting factors do not apply [*al-Bahr ar-Raiq* (140/6)]

¹⁴¹ There are two scenarios – an exchange of wheat for barley in differing amounts is allowed as long as it is not on credit; an exchange of one Marwi cloth for 2 Marwi cloths is allowed as long as it is hand to hand. An exchange of one slave for two slaves deferred payment is not allowed because they are of the same category. [*al-Bahr ar-Raiq* (139/6)]

Muslim narrates that the Nabi ﷺ bought a slave in exchange for two black slaves.

¹⁴² Abu Sa'id al-Khudri رضي الله عنه narrates: Bilal brought Barni dates to Rasulullaah ﷺ. He asked him, "Where is this from?" He replied, "I had some low quality dates. I gave 2 Sa' of that for 1 Sa' of this." He said, "That exactly is Riba. Do not do that. When you want to buy that, then sell your dates in a separate sale and then buy them with your money." [*al-Bukhari and Muslim*]

At-Tashīl ad-Darūrī (Part 1)

dates and salt. Whatever Rasulullaah ﷺ declared to be weighed in which excess is forbidden will be regarded as a weighed product forever even if the people no longer weigh them e.g. gold and silver. Whatever Rasulullaah ﷺ did not explicitly define will be treated according to the custom of the people. If something is weighed in the custom of the people then it is a weighed product. If something is measured in the custom of the people then it is a measured product. If something is counted in the custom of the people then it is a counted product.

Question 827) When must possession be taken?

A: In the monetary category – gold and silver – the exchange must be made in the gathering. This is called Bay'us Sarf (currency dealings). Besides the monetary category, any other good wherein there can be Riba must have the terms of taking possession stipulated. Immediate exchange is not a condition.

Question 828) Is it permissible to exchange wheat for its flour or cereal; or the cereal for the flour?

A: These transactions not allowed; neither in different nor in equal amounts.

Question 829) What is the ruling of Imaam Abu Hanifa رحمته الله concerning exchanging meat for an animal?

A: It is permissible.

Question 830) What do the other two Imams say?

A: Imaam Abu Yusuf رحمته الله agrees with Imaam Abu Hanifa رحمته الله. Imaam Muhammed رحمته الله says that the exchange is not allowed until the meat is more than that in the animal. The flesh will equal each other and the excess will be for the offal etc.

Question 831) What does Imaam Abu Hanifa رحمته الله say about exchanging an equal amount of dry dates for moist dates or grapes for raisins in the same way?

A: It is permissible according to him because they are of the same category. According to the other two it is not permissible.

Question 832) Is it permissible to exchange olives and olive oil; or sesame seeds for sesame oil?

A: It is not allowed unless the oil is more. The oil will match the oil inside and the excess oil will be for the rest of the olive/sesame.

Question 833) Can two different kinds of meat be exchanged, one more than the other?

A: Yes.

Question 834) Can camel-, cow, and goat-milk be exchanged for each other in different amounts?

A: Yes, these too are permissible.¹⁴³

Question 835) A man exchanged vinegar made from reject dates with grape-vinegar in different amounts. What is the ruling?

A: Permissible as well.

Question 836) What do you say about exchanging wheat-bread for wheat or wheat-flour in different amounts?

A: Permissible as well.

Question 837) A man permitted his slave to trade. He then buys something from his slave in a Riba transaction. What is the ruling?

A: The transaction is valid. There is no Riba between an owner and his slave. The slave and whatever is in his possession belongs to the owner in any case.

Question 838) What is the ruling of a Muslim having a Riba dealing with a Harbi [Kafir of Darul Harb] in Darul Harb [land of hostile Kuffar]?

A: There is no Riba ruling between a Muslim and Harbi in Darul Harb.

¹⁴³ Because they are sub-categories in such a way that they are regarded as independent categories.

Bay'us Sarf [Currency dealings]

Question 839) What is Sarf?

A: It is the terminology of the Fuqaha for the exchange of monetary item for monetary item such as gold for silver

Question 840) What is the ruling of exchanging gold for gold or silver for silver?

A: It is only allowed if done equal amount for equal amount, hand to hand, as discussed under Riba.

Question 841) Are different amounts allowed if the two gold/silvers are of different qualities and make?

A: No, because quality and manufacture are not considered in Sarf.

Question 842) What is the ruling of exchanging gold for silver?

A: The categories differ, hence the amounts may differ but it is Wajib to take possession in the gathering of the agreement.

Question 843) If they separated and one or both did not take possession what is the ruling?

A: The agreement is void.

Question 844) Is it permissible to transact with the goods received in Sarf before taking possession?

A: No.

Question 845) A man sold gold for silver in number of units. What is the ruling?

A: It is allowed because the categories are different. There is no condition of the amounts having to be equal, but physical exchange must take place before separation.

Question 846) A man sold a sword decorated with silver for 100 Dirham and the decoration cost 50 silver Dirham. The buyer paid 50

Dirham to the price and the remainder was left as a debt. What is the ruling of the transaction?

A: The transaction is correct. The amount taken goes for the silver even if not stipulated and the outstanding amount is a debt for a time which the two agree upon.

Question 847) If the buyer said, "Take this 50 for both?"

A: That is also allowed.

Question 848) If they separated before taking possession?

A: The transaction is void regarding both the sword and the decoration if the decoration cannot be separated without difficulty. If it can easily be separated then the transaction is correct in the sword but void for the decoration.

Question 849) A man sold a silver vessel for gold or silver. They separated and he only took part of the price. What is the ruling?

A: The transaction is void in the amount he did not take and correct in regard to the amount he took. They are now partners in the vessel.

Question 850) What can the buyer do now?

A: He can purchase the rest of the vessel with the remainder of the price or he can rescind (cancel) the sale.

Question 851) He sold a piece of ingot (pieces of raw silver) then became a partner in it (discovers that someone else has a right over part of it). Is there a choice in this scenario also?

A: No, he will take the part which remains according to the outstanding amount.

Question 852) 2 Dirham and a Dinar were exchanged for 2 Dinar and Dirham. Is this allowed?

A: Yes, each category will be regarded as exchanged for the opposite category.

Question 853) If 11 Dirham were exchanged for 10 Dirham and Dinar, is this allowed?

A: Yes, the 10 is for the 10 and the one Dirham for the one Dinar.

Question 854) Is the exchange of 2 Dirham and a Dirham of wheat for one Dirham and two Dirham of wheat allowed?

A: Yes.

Question 855) Can a gold Dinar or silver Dirham with alloy be exchanged for its same category in a different amount?

A: If the overwhelming metal of the Dinar is gold it will be treated as gold; and similarly with the Dirham. Thus the prohibition of differing amounts in proper gold/silver will apply. If most of the metal is alloy then they will not be regarded as gold/silver. They will be regarded as goods. If it is sold for its category in differing amounts then it is correct. (Immediate possession is still necessary because there is gold/silver in the goods which cannot be removed with ease.)

Question 856) A man bought goods with alloyed Dirham/Dinar. The people then stopped using those coins before the seller took possession of them. What is the ruling?

A: According to Imaam Abu Hanifa رحمته الله the transaction is void. According to Imaam Abu Yusuf رحمته الله the buyer must pay the price which was prevalent on the day of the sale. According to Imaam Muhammed رحمته الله he must pay the price of the last day the old coins were still used by the people.

Question 857) Can something be bought with accepted currency without specification?

A: Yes, and if it is no longer accepted then it is not allowed until it is specified.

Question 858) If he buys with accepted currency and the currency is no longer accepted by the time the seller takes possession, what is the ruling?

A: The sale is void according to Imaam Abu Hanifa رحمته الله and the other two differ as above.

Question 859) A man bought goods with a half Dirham worth of currency [e.g. coins]. Is this permissible?

A: Yes, he owes the half Dirham worth of currency.

Question 860) A man gives a money-exchanger a Dirham and says, "Give me a loose currency for the half Dirham and for the other half give me a half dirham except a Habbah [small bit]. Is the sale valid?

A: It is void according to Imaam Abu Hanifa رحمته الله. According to the other two Imams it is valid in the loose change and void in the rest.

Question 861) If he said, "Give me a half Dirham worth of loose currency and a half except for a Habbah?"

A: It is permissible.¹⁴⁴

Question 862) If he instead said, "Give me a small Dirham weighing a half Dirham except a Habbah and give me the rest in loose change," is this permissible?

A: Yes, the small Dirham will be in exchange of the half Dirham less a Habbah and the loose currency in exchange for the remainder.

Salam [Prepayment – Forward Buying]

Question 863) Are there transactions where immediate exchange of the goods is not needed?

¹⁴⁴ Because in this case he made the whole Dirham in exchange for what he asked. Hence his half Dirham less the Habbah will be in exchange for its equal and the remainder of his Dirham will be for the loose currency.

A: Yes, it is called Salam. It is an exchange of Dayn [deferred payment] for 'Ayn [immediate payment]. It is allowed even though the buyer only takes the goods after a specified time.

Question 864) What is the general rule for Salam's permissibility and impermissibility?

A: Salam is permissible in whatever can be fully described and quantified. If these cannot be described then Salam is not allowed.

Question 865) List the categories in which Salam is allowed.

A: It is allowed in what can be measured in volume, weighed, measured in length, and counted (where the items do not differ e.g. walnuts and eggs). It will not be permissible in a bundle of wood or bunch of straw.

Question 866) Are there conditions for this kind of sale?

A: Yes, they are as follows:

1. The category [jins] must be known.
2. The type must be known.
3. The description must be known.
4. The quantity must be known.
5. The quantity of the payment must be mentioned if it such which must be quantified e.g. measured by volume or weight or number.
6. The place where it will be delivered when there is carrying and effort involved.
7. The sale is only correct if on deferred delivery and the time has been set. (Sale is not correct except on credit, hence the date of execution of sale (i.e. handing over the goods) must be known.)

Question 867) Is there a difference between Imaam Abu Hanifa رحمته الله and the other two Imams?

A: Yes, they say that the payment need not be mentioned if it is known. It is also not necessary to mention the place of delivery, in which case it will be delivered at the place where the agreement had been concluded.

Question 868) Is Salam allowed in cloth?

A: It is allowed if the length, breadth, thickness, description, category and type have all been mentioned.

Question 869) Is Salam allowed in jewels and brocade?

A: No.

Question 870) Is Salam allowed in unbaked and baked bricks?

A: It is allowed if a known brick mould is mentioned.

Question 871) The seller hands the goods when the period had expired. When must the buyer pay?

A: The Salam will only be valid if the buyer paid in the Majlis (in the same gathering prior to separation) of the agreement before they separate.

Question 872) A Salam sale was concluded. The seller then wished to transact with the payment received or the buyer wished to transact with the goods receivable. What is the ruling?

A: Neither may transact until the goods are possessed. This includes that no partnership or Tawliyah transaction may be done before the possession.

Question 873) Are there any other conditions for the Salam to be valid.

A: Yes, the Fuqaha have also stated that the goods must be in existence¹⁴⁵ from the time of the agreement until the expiry of the time.

¹⁴⁵ Meaning that it should not disappear from the markets.

Question 874) A man concluded Salam on a specific article. Is this valid?

A: No.

Question 875) If the Salam was concluded on food from a specific town or fruit from a specific tree. Is this valid?

A: This is also not correct.

Kitabur-Rahn [Collateral - Pawning]

Question 876) What is Rahn linguistically and in Shari'ah?

A: Linguistically it is simply to retain something for any reason. In Shari'ah it is the retaining of something in order to secure the fulfilment of a right.

Question 877) How is a Rahn agreement made and fulfilled?

A: It is made with offer and acceptance. It is fulfilled when the one who has the right [Murtahin] receives the collateral. Thus if he takes possession in a way, that the collateral is separate and completely in his control then the fulfilment is complete.

Question 878) Offer and acceptance was made but the Murtahin did not take possession of the collateral. What is the ruling?

A: For as long as the Rahn has not be given over, the one who must give it [Rahin] may either hand it over or he may rescind the agreement. Once it is handed over it falls in the responsibility of the Murtahin.

Question 879) Why has Rahn been allowed in Shari'ah?

A: So that there is an assurance of fulfilment of debt, and the right of the creditor not be lost. Thus Rahn is not correct without being attached to a debt.

Question 880) The Murtahin took control of the collateral and it perished in his hands. Upon whom is the responsibility?

A: We have already mentioned that the Murtahin is responsible once he assumes control over the collateral. The Fuqaha have mentioned that he is responsible to the value of the debt or the collateral, whichever is the lesser.

Question 881) What do you mean, "the debt or the collateral, whichever is the lesser"?

A: If the collateral is destroyed in the hands of the Murtahin and its value equalled the debt, then legally the Murtahin has had his debt fulfilled. If the value is less than the debt, that amount is deducted from the debt and the Murtahin claims the remainder from the Rahn. If the Rahn is more than the debt, then the excess is treated as a "trust" with all the applicable laws. Thus if the collateral perished in the hands of the Murtahin, he has no responsibility for the excess because there is no claims for responsibility for trusts. The debt is forfeited in lieu of the value of the Rahn which was destroyed in the creditor's hands.

Question 882) You mentioned that the Rahn must be separate and completely in the Murtahin's hands. What is the difference do these conditions make?

A: These conditions exclude whatever do not fall within their ambit. Hence a jointly owned Rahn is not allowed, as are fruits on trees without the trees, crops in the earth without the land, and land without the crops.

Question 883) Can Rahn be taken for trusts like Wadi'ah and 'Ariyah (deposits and borrowed items)?

A: No, because there is no liability if these things perish.

Question 884) Can Rahn be taken for Capital of a Mudarabah and partnerships?

A: No.

Question 885) Can Rahn be taken for the money given in Salam [prepayment]; or Sarf; or the good for which the Salam payment was made?

A: Yes.

Question 886) A Salam or Sarf agreement was concluded. The Murtahin took possession of Rahn which perished in the same gathering. What is the ruling?

A: The Salam or Sarf is concluded. The Murtahin's claim has legally been met with.

Question 887) The two parties agreed to a Rahn, but stipulated that a just person keep it. Is there a problem with that?

A: No.

Question 888) They both agreed to keep the Rahn with a just third-party. Can either party take it from him?

A: That is not permissible for either of them.

Question 889) Who is liable if it perishes in the hands of the third party?

A: The Murtahin is liable because it perished under his responsibility. His debt is fulfilled just as if it was in his own physical possession.

Question 890) What do you say about Dinar and Dirham; or measured goods or weighed goods as Rahn?

A: It is permissible. If they were given as Rahn for a debt of the same Jins and perishes, then the like amount is reduced from the debt even if they differed in quality and manufacture.

Question 891) The creditor took a like amount from his debtor. After spending it he learnt that it was counterfeit. What is the ruling?

A: According to Imam Abu Hanifa رحمته الله his debt has been fulfilled by what he took and spent. According to the other two Imams he will return an amount equal to the counterfeit and claim the correct amount.

Question 892) He gave two slaves as collateral for a debt of 1000. He then paid the part of the debt equal to the proportion of one of them. May he take that slave back?

A: He may not take either one until he pays the full debt.

Question 893) Can the debtor appoint the creditor or the just man keeping the collateral or someone else to sell the collateral on his behalf upon settlement of the debt?

A: Yes, the appointment of these agents is allowed.

Question 894) If the above appointment was a condition of the Rahn, can the Rahin cancel the appointment?

A: No, and if he does so the agent remains the agent.

Question 895) Does the agency terminate if the Rahin as above, dies?

A: No.

Question 896) Can the creditor demand payment of his debt while he hold the collateral?

A: Yes.

Question 897) The debtor wishes to sell the collateral in order to pay off the debt. Is it Wajib upon the Murtahin to facilitate the sale?

A: It is not. He may say to the debtor, "Pay the debt and then take your collateral." Upon payment the creditor must return the collateral.

Question 898) What is the ruling when the debtor sells the collateral without the creditor's permission?

A: The sale is suspended until either the Murtahin confirms it or the debt is paid.

Question 899) A man was already holding a slave as collateral when the owner set him free. Is this valid?

A: Yes, the slave is free.

Question 900) What resort does the creditor now have after the slave was freed to recover his debt?

A: If the debtor is well off and the debt is immediately payable, then the creditor may demand payment of the debt. If it was for a specified time, then he may claim from him the value of the slave and retain it as collateral. If the debtor is not well off, then the creditor may demand that the slave earn towards paying the debt. The slave must reclaim his payments from the former owner.

Question 901) How can the slave claim from the old owner?

A: Because he had set him free at no charge. The earnings given towards the debt were acquired after being free.

Question 902) The Rahin destroyed the collateral. The creditor has no collateral at hand. What should he do?

A: The Rahin is liable for the price of the collateral which will be given as new collateral.

Question 903) The collateral is in the hands of the creditor. A third party destroys it. Who is liable for the destroyed item? What does the Murtahin keep as collateral?

A: The Murtahin must claim compensation from the third party. He will take the price and keep it as collateral.

Question 904) What is the ruling of the Rahin damaging the collateral?

A: He is liable [because he is violating the right of the Murtahin]

Question 905) What is the ruling of the Murtahin damaging the collateral?

A: The value of the damage is reduced from the debt. He is liable for any amount in excess of the debt.

Question 906) If the collateral causes damage to the persons or wealth of the Rahin or the Murtahin, who is responsible?

A: The damage of the Rahn is upon them and damage to their wealth is forfeit.

Question 907) The Murtahin needs to hire premises for the collateral. Who pays that cost?

A: The Murtahin.

Question 908) If the collateral is a goat or camel for example, and needs a herder. Who pays his fees?

A: The Rahin.

Question 909) Who pays the living expenses of the collateral?

A: The Rahin.

Question 910) Who owns any produce of the collateral e.g. milk, a baby, wool, fruit etc?

A: It belongs to the Rahin, but he may not take possession. It will be included as part of the collateral.¹⁴⁶

¹⁴⁶ Although the Murtahin may hand it over to the Rahin if he wishes [al-Jawharah]

Question 911) The produce remained in the hands of the Murtahin and perished in his hands. What is the ruling?

A: There is no liability.

Question 912) If the original collateral perished and the produced remained?

A: The Rahin will reduce his debt by the proportion of the original. He will spread the debt over the value of the collateral the day the Murtahin took it; and the value of the produce the day of the reduction. The debt will be reduced according to the proportion due to the original. The proportion of falling on the produce is the Rahin's.¹⁴⁷

Question 913) The Murtahin already took the collateral. He now wants more collateral or the debtor wants an increase in the debt. What is the ruling?

A: The collateral can be increased but not the debt according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله, except that it will no longer be classified as Rahn. According to Imaam Abu Yusuf رحمته الله an increase is allowed in both.

Question 914) A man took a joint loan from two men. He gives a single item as Rahn. What is the ruling?

A: It is permissible. The item is collateral for each of the two.

Question 915) What is the liability in that single item?

A: It is the responsibility of in proportion to each one's share of the debt.

¹⁴⁷ E.g. a man gave a sheep worth 10 Dirham as collateral for a 10 Dirham loan. She gave birth and then died. If the value of the lamb is 10 Dirham, the sheep died as half the value of the debt i.e. 5 Dirham. If the lamb grew to value so that the day of claim it was worth 20 Dirham then the sheep's proportion is 2 and two-thirds of a Dirham. If the lamb is 30 Dirham the sheep's proportion is a quarter. If the lamb fell in value to 5 Dirham, the sheep's proportion is two-thirds or 6 and two-third Dirham. [al-Jawharah]

Question 916) If one debt is paid, can the Rahin take back that proportion from the collateral?

A: No. It is now entirely collateral in the hands of the other until his debt is settled.

Question 917) A man sold a slave on condition that the buyer gives a specific item as collateral for the price. The buyer refused to hand over the collateral. What is the status of the sale and the Rahn?

A: The sale is valid. The buyer cannot be forced to give the collateral. The seller can then either forfeit the Rahn or cancel the sale; unless the buyer immediately pays the price or gives the value of the collateral to keep as collateral. He will then keep it until settlement of the debt.

Question 918) Can the Murtahin leave the collateral with his wife or child for safekeeping?

A: Yes. He may guard it himself or give it to his wife, child or servant who is of his household.

Question 919) If he left it in the care or trust of someone outside his household, what is the ruling?

A: He bears liability because he exceeded the bounds.

Question 920) If the Murtahim exceeded the bounds on the collateral, how is his liability treated?

A: It will be deemed as Ghasab [usurpation] for the entire value.

Question 921) What is the ruling if the Murtahin returns the collateral to the Rahin?

A: He is no longer responsible for it. If it now perishes in the hands of the Rahin he has no liability.

Question 922) Can the Murtahin ask for the Rahn back after he returned it?

A: Yes. When he takes it back his responsibility also returns.

Question 923) If the Rahin dies before settlement of the debt, how can the Murtahin claim his debt?

A: The Rahin's executor will sell the Rahn and pay the debt. Any excess will be paid into the estate for distribution amongst the heirs.

Question 924) Who sells the Rahn if there is no executor?

A: The judge will appoint an executor to sell it and pay the debt.

Kitabul Hajr ***[Incapacitated from transacting]***

Question 925) Are there people who are interdicted from transacting?

A: Yes, there are three causes for incapacitation in Shari'ah:

1. Childhood
2. Slavery
3. Insanity

Question 926) Explain further.

A: A child may not transact except with the permission of his Guardian. A slave may not transact except with the permission of his owner. A madman may not transact at all.

Question 927) A man bought or sold with a child or slave who understands¹⁴⁸ and aims to transact. What is the ruling?

¹⁴⁸ Understanding trade is a condition for the validity of the transaction.

A: The guardian/owner may confirm the transaction or rescind it.

Question 928) Due these three causes prevent transacting in words only or actions as well?

A: The child and madman are incapacitated in regards words. The details of the slave will be discussed later InshaAllaah.

Question 929) A child or madman destroyed someone's wealth. Is the liability from their wealth?

A: Yes, this is what is meant that they are not incapacitated in regards to their actions. It does not mean that they are not forbidden from destroying the wealth of people.

Question 930) What is the effect of Hajr in words?

A: The contracts, confessions, divorce and setting slaves free are void.

Question 931) What are the details of Hajr on a slave?

A: His words are implemented with regards to his rights, not the rights of his owner.

Question 932) A slave confessed to owing money in regards himself. What is ruling?

A: He, not the owner, is obligated to pay the amount. The obligation is only enacted after he gains freedom, not immediately.

Question 933) If a slave confesses to a crime regarding penal punishment or execution, when will the punishment be inflicted?

A: He will be immediately punished. It will not be stalled until his freedom.

Question 934) Does the divorce of a slave fall when he pronounces divorce upon his wife or does his owner declare the divorce?

A: The divorce is in effect when the slave divorces his wife, not when his owner declares so.

Question 935) What is the ruling of the transactions of a man with his own wealth if he is free and adult but silly and incompetent [Safih]?

A: According to Imaam Abu Hanifa رحمته الله if a man has intelligence, has attained puberty, and is free, he may not be incapacitated. He is allowed to transact with his wealth, even if he wastes and destroys his wealth in something without purpose e.g. he throws his wealth into the sea or burns it.

Question 936) Is there a limit according to Imaam Abu Hanifa رحمته الله for when the wealth of a Safih will be handed over to him?

A: Yes, according to him even a man attains puberty without competence then his wealth will be withheld until he is 25 even if he has still not attained competence. Transaction before that will be in effect though.

Question 937) What do Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله say about the Safih?

A: They say that he will be declared incapacitated and will not be allowed to transact with his wealth. If he sells anything his sale will be void unless the judge sees some benefit in it. He who attains puberty without competence will not be given his wealth until he attains competence, however long that may be. He may not transact in it, however, his Zakah and expenses for his wife, children and whatever other blood-relatives he must support will be taken from his wealth.

Question 938) What is the ruling of a Safih freeing his slave?

A: He is free according to all the Imams, however Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله say that the slave has to earn and compensate his price to the Safih.

Question 939) What is the ruling of a Safih marrying?

A: The marriage is valid. The mahr [dowry] he offered must be examined. The amount up to Mahr al-Mithl is correct and the excess void.

Question 940) Is the Safih permitted to perform the Fard Hajj?

A: Yes, he should not be stopped. However, the judge will not give him his money. He will give it to a reliable person amongst the Hujjaj who will fulfil his Hajj expenses.

Question 941) A Safih is sick and leaves a bequest for relatives and other good avenues of spending. Is the bequest valid?

A: It is valid up to a third of his wealth.

Question 942) What is the ruling of preventing a bankrupt person who has outstanding debts from transacting?

A: Imaam Abu Hanifa رحمته الله said, "I do not declare bankrupt persons incapacitated because of debts. For when he is liable to pay the debts he will simply plead incapacitation. He should therefore not be declared incapacitated."

Question 943) A bankrupt man has wealth but refuses to pay his debts. Will the judge intervene in his wealth according to Imaam Abu Hanifa رحمته الله?

A: He will not transact with it, but will withhold it until the owner sells it and pays his debts.

Question 944) It is apparent that the debtor owns Dirham and Dinar. How will the judge see to the payment of the debt?

A: If the debt is in Dinar and he has Dinar, or the debt is Dirham and he has Dirham, then the judge will have his debts paid from that even if the debtor is displeased. If the debt is Dirham and he owns Dinar or vice-versa, the judge will sell the coins and pay the creditors.

Question 945) What do Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله say about declaring a bankrupt man incapacitated?

A: They judge will only declare an Interdict of Incapacitation against him when the creditors seek such. He will then be prevented from buying, transacting and confession in order that he does not harm the creditors. The judge will sell his goods when he is prevented from selling. He will share the proceeds amongst the creditors in proportion to their claims. The judge will spend from the debtor's wealth upon his wife, small children and blood relations.

Question 946) What is the ruling of the incapacitated bankrupt person confessing to a debt during his Incapacitation?

A: He is liable to pay it after the settlement of the prior debts.

Question 947) The debtor is not known to have any wealth. When the creditors seek an Interdict against him he says, "I have no wealth. What can the judge do?" What is the ruling?

A: The judge will detain him for every debt which generated wealth in his hands such as proceeds of a sale and loans; also for every debt incurred by contract such as dowry and Kafalah. He will not be detained for anything else such as compensation for usurpation and fines and blood-money, unless there is proof that he has wealth.

Question 948) Will the judge detain him forever or for a set time?

A: The aim is not detention, but to expose any money he may be hiding. The judge will detain him for two-three months. He will investigate from the people about his condition and wealth. If any wealth is not discovered he will release him or if it is proved that he has no wealth.

Question 949) Can the creditors be kept away from him after he was released when no wealth was discovered?

A: They will not be kept away from him. They may not prevent him from trading and travelling. They may demand payment and may

take from his earnings anything in excess of his expenditure upon himself and his family. They will divide the excess in proportion to their claims.

Question 950) Do they other two Imams differ in this?

A: Yes, they differ with Imaam Abu Hanifa رحمته الله and say that the creditors will be kept away from the debtor whom the judge has declared bankrupt unless they can prove that he has acquired wealth.

Question 951) Will an open sinner be declared incapacitated?

A: Not if he manages his wealth.

Question 952) A man was pious and became a sinner. Will he be incapacitated?

A: No, an original sinner and a new sinner are the same in this.

Question 953) A man bought something and took possession of it. He is indebted for the price. He then becomes bankrupt and has creditors from before this sale. The goods he bought are still with him. Can the creditor claim it exclusively?

A: He is the same as the other creditors in it.

NOTE:

Question 954) At what age will a boy or girl be declared to have attained adulthood?

A: A boy is an adult if he has a nocturnal emission, ejaculation or impregnates a woman if they had sex. If none of that occur then when he reaches 18 years. A girl attains adulthood upon menses, nocturnal emission or pregnancy. If none of that occur then when she is 17 years.

Question 955) Do all three Imams say that?

A: The others differ with Imaam Abu Hanifa رحمته الله and say that if none of the above factors occur then when they turn 15. The Fatwa is on this.

Question 956) A boy or girl is close to the age of puberty and it is not clear if they have attained puberty. They declare that they have attained puberty. Will their word be accepted?

A: Yes, and the laws of adults will apply to them.

Kitabul Iqrar [Confession]

Question 957) What is the ruling of Confession in Shari'ah?

A: When a free, adult intelligent person confesses, his confession becomes obligatory upon him, whether for the unknown or known, his confession holds him liable.

Question 958) How can he be held for something unknown?

A: He will be asked to explain the unknown thing he confessed to. If he refuses then the judge will force him to explain.

Question 959) A man said, "I owe something." The people questioned him and the judge forced him to explain, so he said, "Yes, I owe, I owe a drop of water or a grain of wheat." What is the ruling?

A: His explanation will not be accepted. He must mention something which has a price.

Question 960) Someone confessed to something, known or unknown, but the one who for whom he confessed claimed more than that. What will the decision be?

A: If he confessed to an unknown amount or said, "I owe him money," then the decision will be upon what he explains that to be. His word will be accepted upon him taking an oath. His word will be accepted in the greatness or the smallness of the amount.

Question 961) If he confesses, "I owe him a great amount," then says that it is 10 Dirham, will he be believed?

A: His confession will not be accepted for less than 200 Dirham.

Question 962) If he confesses, "I owe him many Dirham," and then says that it is 3, will that be accepted?

A: No, when he said many, he will not be believed in less than 10.

Question 963) If he says, "I owe him Dirahim,"? [plural of Dirham]

A: He is responsible for at least 3 Dirham because 3 is the least plural [in 'Arabic], unless he confesses to the exact amount.

Question 964) If he said, "I owe him so much, so much Dirham," or "I owe him so much and so much Dirham," what is the ruling?

A: He will not be believed in less than 11 Dirham [Ahada 'Ashar] in the first sentence and in less than 21 [Ahad wa 'Ishrin] in the second.

Question 965) If he says, "For him upon me is ..." or "For him from my side ...?"

A: It is deemed a confession of debt.

Question 966) If he says, "I have with me his ..." how is this confession interpreted?

A: It is a confession of a trust he is holding.

Question 967) A man claims against another, "You owe me 1000 Dirham." The one addressed replies, "I have paid it/ You received payment already/ The account is balanced/ Give me respite," what is the ruling?

A: These are interpreted as confessions.

QUESTION 968) A man confesses that he owes an amount and was given respite to pay. The other acknowledges the amount but denies

that respite was given. Will a ruling of respite be given or may he pay immediately?

A: He will pay immediately and the creditor will take an oath that no respite was given.

Question 969) Someone confesses to an amount but immediately declares an exception to that amount. What is the ruling?

A: The exception is valid and he is liable for the rest, whether the exception was for most of the amount or a minority amount.

Question 970) And if he excepts the entire amount?

A: The exception is void and he owes the amount he confessed to.

Question 971) What is the ruling if he says, "I owe him 100 Dirham except a Dinar/a Qafiz of wheat."

A: He will owe 100 Dirham less the value of a Dinar or less the value of a Qafiz of food.

Question 972) He said, "I owe him 100," without saying what and adds, "and a Dirham." What does he owe?

A: He owes 101 Dirham. It will be ruled that he left out the word Dirham after 100.

Question 973) If he says he owes a 100 and a cloth?

A: He owes a cloth and he will be questioned what the 100 is.

Question 974) A man confesses to the right of another and immediately utters, "InshaAllaah." What is the ruling?

A: He owes nothing. The addition is such that it removes the statement from being a confession and makes it as if it was never uttered.

Question 975) A man confesses to the right of another and adds, for example "I have an option for three days." What is the ruling?

A: The confession is valid and the option is void, because the option is for rescinding which the confession precludes.

Question 976) A man confesses to owing a house except the actual building.

A: He will owe the house and the building. His exception will be disregarded.

Question 977) If he says, "The building of the house is mine and the courtyard belongs to so and so,"?

A: His statement will be accepted.

Question 978) He confesses to owing dates which are on the branch.

A: He will owe the dates and the branch.

Question 979) He confessed to owing an animal which is in the stable.

A: He will owe the animal only.

Question 980) He confesses, "I usurped a cloth wrapped in a handkerchief/a cloth in a cloth."

A: He owes the cloth and handkerchief/ both cloths.

Question 981) He confesses, "I owe a cloth in 10 cloths."

A: According to Imaam Abu Yusuf رحمته الله he owes one cloth and according to Imaam Muhammed رحمته الله he owes 11.

Question 982) He confessed to usurping the cloth of someone. He brings a defective cloth and says that that is the cloth. Will that be accepted?

A: He will take an oath and his statement accepted.

Question 983) He confessed to Dirhams but said that they were counterfeit.

A: He will take an oath and his statement accepted.

Question 984) He says, "I owe 5 by 5," intending mathematical multiplication.

A: He owes 5 once.

Question 985) He says, "I owe 5 with 5."

A: He owes 10.

Question 986) He says, "I owe from a Dirham up to 10."

A: According to Imaam Abu Hanifa رحمته الله the last extreme is omitted he owes 9. According to the other two it is included and he owes 10.

Question 987) If he says, "I owe him 1000 Dirham for a slave I bought which I did not take possession of," must he pay anything?

A: If he mentions a specific slave then it will be said to the seller, "If you wish, give him the slave and take the 1000, or else there is nothing for you." If he does not mention a specific slave, then according to Imaam Abu Hanifa رحمته الله he owes the 1000.¹⁴⁹

¹⁴⁹ And his addition, "which I did not take possession of," will not be accepted, whether he says it immediately or after a pause. It will be treated as a recanting after having confessed to owing the money. Abu Yusuf رحمته الله said that if he said it immediately it will be accepted and he does not owe anything. If he pauses then it will not be accepted if the seller denies it is from that sale.

Question 988) What does he owe if he says, "I owe him 1000 Dirham for pigs/wine."?

A: He owes 1000. His statement that it is the price of pig/wine will not be accepted.

Question 989) A man confesses to owing 1000 for a sale and says that it is counterfeit that he owes. The seller claims it to be correct currency he owes. How will a decision be made between them?

A: He owes correct currency according to Imaam Abu Hanifa رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will be belived if he said it immediately and will not be believed if he paused in between and will then owe correct currency.

Question 990) A man confesses to owing a ring or a sword, what does he owe?

A: He owes the ring with the stone/the sword with the sheathe and strap.

Question 991) He confessed to owing a covered canopy and does not mention the curtain and poles.

A: He owes the canopy with the curtain and poles.

Question 992) He says, "I owe her foetus 1000."

A: If he explains that it is a bequest from someone or that the foetus's father died and the foetus is his heir, then the confession is valid. If his confession is ambiguous [he did not add any explanation] then it is not correct. This is according to Imaam Abu Yusuf رحمته الله. According to Imaam Muhammed رحمته الله the confession is valid and he owes that amount whether he explained or not.¹⁵⁰

¹⁵⁰ And his words will be interpreted as in the given explanation of bequest or in inheritance.

Question 993) He confesses that the foetus in a slave-girl or a sheep belongs to a certain man. Is this confession valid?

A: Yes. He owes what he confessed to.

Question 994) A man confesses to debts on his deathbed. He had other debts incurred during his health. There were also debts incurred during his final illness with known causes. Which of the two will take preference?

A: The debts during his health and the debts with known causes take preference.

Question 995) If he does not have debts incurred while healthy, what is the status of the debts to which he confessed to in his final illness?

A: His confession is valid. The rights of the creditor take preference over that of the heirs.

Question 996) What is the status of the confession if he confesses to owing one of the heirs?

A: The confession is void unless the other heirs accept it.

Question 997) He confessed on his deathbed to owing a stranger. He then added, "He is my son." What is the effect of the two confessions?

A: The confession of lineage will be accepted and the son's lineage established as his. The confession of debt is void.

Question 998) A man confessed on his deathbed to owing a woman. He then marries her.

A: The confession is valid. The marriage does not nullify it.

Question 999) A man divorced his wife thrice on his deathbed. He then confesses to owing her an amount and dies. What does she take from the estate?

A: She takes the lesser of either the debt or the inheritance share.

Question 1000) A man confesses that a slave is his son. What is the ruling?

A: If the slave does not have a known lineage then his lineage will be established as per the confession.

Question 1001) A man confessed that a slave is his son. The lineage is thus established and the man dies. Will the slave receive a share with the other heirs?

A: Yes.

Question 1002) Can a man confess that a person is his father/mother/wife/son/Mawla? [freed-slave or the freed slave's master]

A: Yes.

Question 1003) Can a woman confess that a person is her father/mother/husband/Mawla? [freed-slave or the freed slave's master]

A: Yes.

Question 1004) What is the ruling of her confessing to a child?

A: If the husband does not confirm it then her confession will not be accepted. If he does confirm, or a capable woman testifies that she witnessed the birth, then the lineage will be established to her husband.

Question 1005) If someone confesses to a lineage other than parents and children, e.g. he says, "This is my brother/paternal uncle," will it be accepted?

A: It will not be accepted in terms of lineage.¹⁵¹ As for inheritance, if the confessor has an heir, whether close or far, then that heir is more entitled than the one confessed about.¹⁵² If he does not have an heir, then the other party will inherit.¹⁵³

Question 1006) A man whose father died confessed to having a brother. Will the lineage be established?

A: No, but the one confessed about will share with the confessor in the inheritance.

Kitabul Ijarah [Hiring]

Question 1007) What is Ijarah?

A: It is an agreement to receive some benefit in exchange for compensation.

Question 1008) Are there conditions for its validity?

A: Yes, the benefit and the fee must be known.

Question 1009) What compensation can one use to hire?

A: That which can be measured. Whatever can be used as payment in a sale can be used as a fee in hiring.

Question 1010) The payment can be measured in numbers or weight. How is benefit measured?

A: Benefit is sometimes measured in time e.g. renting a house to stay in for a month or a year; or hiring land to farm for a year or two. The contract will thus be valid for a certain agreed period.

¹⁵¹ Because it claims lineage to a third party.

¹⁵² Since the lineage is not established, his claim cannot violate the rights of the heir.

¹⁵³ Since he may do with his wealth as he wishes when there is no heir.

It is sometimes measured in specified work e.g. hiring a man to dye a cloth or stitch it; or hiring an animal to carry a specified weight to a specified destination; or to ride it for a specified distance.

It is sometimes defined through specification and indication e.g. hiring a man to move food to a specified place.

Hiring houses, animals and land

Question 1011) What is the ruling of hiring animals and houses?

A: Houses may be rented for living and animals may be hired for trade and manufacture.

Question 1012) Can the Mustajir [Hirer] do with it as he pleases?

A: He may do what he pleases except activities like iron-smithy, beaching and milling, which would require the Muajjir's [lessor] permission.

Question 1013) Can land be rented for farming?

A: Yes, on condition that the contract states what will be planted or that the lessee may plant what he wishes. The contract will include the right of watering and right of using the paths even if the contract does not state this explicitly.

Question 1014) Can an open land be rented to build something on it, or plant a tree in it?

A: Yes.

Question 1015) The land was rented for building or planting and the contract period has expired. How will the land be returned to the owner?

A: The tree/building must be removed and the empty land returned to the owner. The land owner also has the option to offer

him the price of free of the land and buy it from him or he may leave it as it is, each owning his own possession.

Question 1016) A man rented a property and the landlord stipulated that a specific person whom he names may only stay in it. Can the man let someone else live there?

A: Yes, because the land will not change with the change in inhabitant.

Question 1017) What is the ruling on renting a shop, whereby the landlord says, "If you use it for selling perfume then it is a Dirham a month and if as a ironsmith then for 2 Dirham a month."?

A: According to Imaam Abu Hanifa رحمته الله the terms are valid and he will pay according to the usage. According to the other two Imams the contract is Fasid.

Question 1018) A man rents a house at a Dirham per every month.

A: The contract is valid for the first month, and Fasid in the rest unless the total months have been stipulated. If he is still living there the next month for even a moment, then the landlord may not evict him until the end of the month; and like that every month in which he stays there at the beginning for even a day or a moment.

Question 1019) A man rents a house for 10 Dirham for the year and does not mention the division of the rent on a monthly basis. Is this valid?

A: Yes, there is no problem with that.

Question 1020) A man rented a house. He received control of it but never stayed there, what is the ruling?

A: He owes the rent, because he was in a position to receive the benefit of the house.

Question 1021) A man rents a house and someone usurps it from him. What is the status of the rent?

A: If the usurpation was before he inhabited it, the rent is forfeited. If it was usurped after he inhabited it, he is liable to pay the rent for the time he stayed there and the balance is forfeit.

Question 1022) A man rents a house and then discovers a defect which makes living in it difficult. What can he do?

A: He may rescind.

Question 1023) If the house is ruined; or the water of the area is cut off; or does not reach the water wheels, what is the ruling?

A: The contract is automatically rescinded without any party rescinding it.

Question 1024) What is the ruling of joint hiring?

A: It is not allowed according to Imaam Abu Hanifa رحمته الله and is allowed according to the other two Imams.

Renting clothing

Question 1025) A man rented clothing and left the terms general. Can he let someone else wear it?

A: In that scenario, yes. If however he said that a specific person would wear it and he dressed someone else in it then he is liable for any damages.

Hiring wet-nurses

Question 1026) Can one hire wet-nurses to breastfeed the children?

A: Yes, she may be hired for a specified fee; such as her food and clothing according to Imaam Abu Hanifa رحمته الله. It will also be her

duty to prepare food for the child, since according to custom that is part of the services of the nurse.

Question 1027) A man hired a wet-nurse and insisted that her husband not have sex with her. What is the status of this prohibition?

A: The prohibition is not permissible. However, if she falls pregnant then the child's family is entitled to cancel her contract if they fear her milk will harm the baby.

Question 1028) A nurse was hired to breastfeed a baby for a set period. She instead fed him sheep's milk. Is she entitled to her fee?

A: No, she did not fulfil her duty.

Hiring animals

Question 1029) Is hiring animals for riding or carrying loads permissible?

A: Yes.

Question 1030) A man hired a camel to carry his provisions during a journey. As he travels he eats from that and the provisions decrease. Can he replenish the supplies for the camel to carry?

A: Yes, he may add back the amount by which the provisions decreased.

Question 1031) A man hired an animal to ride and someone else mounted it. Is that allowed?

A: If the terms of riding were general he can let anyone ride it. If the rider was specified and the hirer let someone else ride then he is liable for any injury the animal may suffer. The same rule applies for any change in the usage.

Question 1032) A man hired an animal to carry a named type and weight of an item e.g. 5 Qafiz of wheat. Can he load 5 Qafiz of something else besides wheat on it?

A: He can load whatever is of the same or lesser burden than wheat e.g. barley and sesame. He may not load that which is a greater burden than wheat, e.g. salt, iron and lead. Similarly if he hired it to carry a certain weight of cotton he may not load it with iron, even if it be the same weight mentioned.

Question 1033) He hired the animal to carry a certain weight of wheat and loaded it with more than that. The animal was injured. What is his liability?

A: If the animal was capable of carrying that weight, then he is liable for the excess of the weight. If the animal was not able to carry it, then he is responsible for the entire damage.

Question 1034) He hired an animal to ride and put someone at the back with him. The animal was injured, what is the liability?

A: He is responsible for half the price of the animal [in addition to the fee] if the animal could bear the load. If not then he owes the full price.

Question 1035) If he reins in the animal or hit it and thereby injured it, what is his liability?

A: According to Imaam Abu Hanifa رحمته الله he owes the full price of the injury. According to the other two Imams there is no liability if he acted in a recognised way.

Question 1036) A man hired a camel to carry a load and two people to Makkah.

A: This is permissible. He may load what is commonly considered to be a load, but if a camel-rider testifies to what is an appropriate load it would be better.

Hiring a bath and studs

Question 1037) What is the ruling of hiring a stallion to breed with a mare?

A: Not permissible.

Question 1038) Can fees be charged for the public baths and for cupping?

A: Yes.

Fees for obedience or sin

Question 1039) Can fees be paid for music and professional mourning?

A: They cannot be hired, nor can any fee be paid for any sin.

Question 1040) What is the ruling of hiring someone for Azan and Iqamah or to teach Quran or Hajj?

A: None of these are allowed according to Imaam Abu Hanifa رحمته الله 154

¹⁵⁴ In previous era provision was made from the public treasury for the teachers of the Quran etc. As this is no longer the case, payment can be made lest the memorising of the Quran disappears. This same applies to teachers, Muazzins and Imams of Salah.

The latter 'Ulama have given Fatwa according to al-Imam ash-Shafi'i's permission due to the force of circumstances and the need of the Ummah. The recipients should not make this an enriching scheme, but should be content with a little.

Responsibility of the Ajir [one hired]

Question 1041) Have the Fuqaha made any distinction in the work and entitlement of fee regarding the labourer?

A: Yes, there are two categories – Ajir Mushtarik [joint] and Akir Khass [special].

Question 1042) What is a Ajir Mushtarik or public worker?

A: He works for whoever hires him for a task, such as a dyers and bleachers. The goods he receives is a trust. He is not liable if it is destroyed without negligence. This is according to Imaam Abu Hanifa رحمته الله. According to the other two Imams he is liable.

Question 1043) What happens if the goods were destroyed due to him, such as a porter dropping the load; the rope tying the goods snaps; or the ship sinks?

A: He is liable for these damages but not for any humans who might have drowned from the ship or fell from the mount. Similarly a phlebotomist (one who removes blood) is not liable if he did not exceed the usual place. If there is excess then he is liable.

Mawlana Rashid Ahmad Gangohi was asked about taking a fee for reciting the Quran in Tarawih. He replied, "Reciting for a fee is Haram. He may not take a fee for that. It is out of necessity that the latter 'Ulama have made an exception of Azan, Iqamah, teaching and lecturing. There is no necessity in this. Deducing from the fee of Azan is wrong." [Fatawa Rashidiyah]

Ibn 'Abidin said, "Hiring someone to read Quran and to convey the reward to the dead is incorrect. None of the Imams have given permission for it. The 'Ulama have said that the one who reads for the sake of money, receives no reward. What then is he gifting to the dead? It is pious deeds which benefit the dead. [Rasail Ibn 'Abidini p175]

Question 1044) What is a Ajir Khass [special worker]?

A: A man who is hired for his to work for someone for a specified time, such as a man hired to work for a man for a month as his servant or shepherd.

Question 1045) What is his liability for something which perishes in his hands?

A: There is no liability for something which perishes in his hands or through his work unless there was negligence.

Travelling with a hired slave

Question 1046) A man hired a slave to serve him. Can he travel with him?

A: He may not, unless that was stipulated in the contract. The reason is because service during a journey is more difficult.

When is one entitled to the fee?

Question 1047) What are the details of time of entitlement?

A: The general worker is not entitled to his fee until he completes the work. The special worker is entitled to his fee by handing himself over in the period of hire, even if the employer does not use his labour.

Question 1048) Can you explain further? There are many kinds of work with many differences between them.

A: The fee does not become payable with the mere making of the agreement. The labourer is entitled in one of three ways – either the condition of early payment is made, or the hirer pays early, or the conditions of the agreement were fulfilled. Here are some examples:

1. A landlord can daily demand rent for a house, unless the contract stipulates a time of entitlement.
2. A camel-driver can ask for his fee at every stopping station from his passengers.
3. A man hires a baker to bake bread at his house at a Dirham per Qafiz. The baker is not entitled to the fee until the bread is taken out from the oven.
4. A man hires someone to make bricks. According to Imaam Abu Hanifa رحمته الله he is not entitled to his fee until the brick is formed. According to the other two, he is not entitled until the bricks are piled up and dry.

Question 1049) A man was hired to cook for a wedding-feast. He cooked the food. When is he entitled to his fee?

A: He is entitled when he dishes out to the guests because that is normally included in the cook's work according to custom.

NOTE:

Every craftsman, whose work has an effect on a good, may retain that good until his fee is settled. The labourer whose work does not have an effect on the product may not retain the goods e.g. porters and sailors.

Conditions and disputes

Question 1050) If the hirer stipulated that the manufacturer produce the goods himself, may he use others in the manufacture?

A: No.

Question 1051) If no condition was set that he do it himself, and the matter was left open?

A: He may then use others for the work.

Question 1052) A man says to a tailor, "If you stitch this cloth into a Persian robe then it's a Dirham and if in a Roman robe then it's two Dirham." What is the ruling?

A: This is permissible. He will be entitled to whatever of the two he does.

Question 1053) If he says, "If you complete the robe today, then one Dirham, if you complete it tomorrow, then a half a Dirham."

A: According to Imaam Abu Hanifa رحمته الله he will pay one Dirham whether today or tomorrow. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the contract is valid and he will be paid according to what was stipulated and agreed upon by both parties.

Question 1054) A man gave a cloth to a tailor. After completion the owner says, "I told you to make a robe and you made a shirt." The tailor says, "I did as you told me to." Or he gave it to a dyer. After completion the owner says, "I told you to dye it red and you dyed it yellow." The dyer says, "I did as you told me to." Whose word will be accepted?

A: The owner's word will be accepted under oath. The tailor/dyer will be responsible for opposing their instructions. The owner can either claim the price of the cloth before any work was done on it and not pay the fee; or he can take it and pay the fee according to the work done, but not exceeding the initial agreed upon fee.

Question 1055) If the owner claims that that the craftsman worked for free and the craftsman claims he worked for a fee, how will it be resolved?

A: According to Imaam Abu Hanifa رحمته الله the owner's word will be accepted under oath. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله if the owner had a relationship of paying a fee to the craftsman he will pay a fee, otherwise not. Imaam Muhammed رحمته الله added that if the craftsman commonly practised the craft for a fee, then his word will be accepted under oath.

Cancellation of hire

Question 1056) Does the contract remain in effect if one of the two parties die?

A: If he contracted it for himself, the hire is immediately terminated with his death. If he acted on behalf of someone else, such as an agent for his principle, a guardian for a child, a parent for his son, then it is not terminated.

Question 1057) Is the contract terminated by a valid excuse?

A: Yes, for example a man rents a shop in the market to trade in and he loses his wealth; or a man rents out a house or a shop and becomes so bankrupt that he cannot pay his debts except by selling the house or the shop, in which case the judge will cancel the contract and sell the house/shop to pay the debt.

Question 1058) A man hires a mount for a journey and then cannot go on the journey. Is that a valid excuse for termination of the contract?

A: Yes.

Question 1059) A man hires mounts to travellers. He agreed to take a man on a journey and then was unable to. Is this an excuse?

A: No, he should send the animal with a hireling if he cannot go himself.

Incorrect conditions of hire

Question 1060) Does the hiring become Fasid through any conditions?

A: Yes, conditions which are not necessary for the fulfilment of the agreement make the contract Fasid just as in the case of sales with such conditions.

Question 1061) If the contract is Fasid and the hireling still does his labour, what must the hirer pay him?

A: He must pay him the market value of such labour, not what they had stipulated.

Conditions of Khiyar

Question 1062) Are conditions of Khiyar allowed in hiring?

A: Yes, just as they are in sale of goods.

Kitabush Shuf'ah [Right of pre-emption]

Question 1063) What is Shuf'ah linguistically and in Shari'ah?

A: The word is derived from *Shaf'* meaning "to join" [because the property is joined to the Shafi' [pre-emptor]. In the terminology of the Fuqaha it is the right to take possession of a house and land to prevent the harm of a neighbour e.g. if a man sells his house or land and tells his neighbour or partner about this sale the partner/neighbour has a right to object to the sale. He can take that was sold at the price at which it was sold. The one who has this right, is called a Shafi' [pre-emptor].

Question 1064) When does pre-emption become Wajib?

A: It is activated for a partner in the thing sold; then for a partner who has a right in the thing sold such as right to water or right of passage; then for the neighbour. The partner with a right to water/passage and the neighbour do not have rights with a partner in

the thing sold [Mabi']. Only when the partner forfeits his right of pre-emption does the partner with a right in the Mabi' receive his right of pre-emption. If he also renounces his right then only does the neighbour receive his right.

Question 1065) When is Shuf'ah activated? When is it established? When does possession pass?

A: The sale activates the right. It is established by testimony. Possession passes by taking it when the buyer gives it up or when the judge rules accordingly.

Question 1066) Explain the testimony.

A: When the Shafi' learns of the sale, he must immediately testify to two men in the same gathering in which he is, that he is claiming his right. This testimony is called Talabul Muwathabah or immediate demand. He will then go and inform the seller (if the mabi' is still in his possession) or the buyer (if he has taken possession) or at the property in question. Once he has done that his right is established. This is called Talabat Taqrir [demand of establishment].

Question 1067) If the Shafi' has done all this but delays lodging his claim by the judge, does he forfeit the claim?

A: According to Imaam Abu Hanifa رحمته الله his claim does not drop if he has made Talabul Muwathabah and Talabut Taqrir. According to Imaam Muhammed رحمته الله it is forfeited if he leaves it for a month.

Question 1068) Is the pre-emption in public baths and in mills?

A: The right is in all property even if it cannot be divided. Thus in this general rule baths, mills, wells and small houses are all included.

Question 1069) What is the ruling on just a building or a tree?

A: There is no pre-emption if it is sold without the land.

Question 1070) Is there pre-emption in goods and ships?

A: No.

Question 1071) Is there a difference between a Muslims and Zimmi?

A: No, both have equal entitlement in this.

Question 1072) Is there pre-emption if someone came to own the property by way of a gift, for example?

A: The principle is that the right arises when someone takes the property for monetary compensation, be it an open sale or a "gift" on condition of compensation. If he does receive the property in a genuine gift with no compensation for it, then there is no pre-emption. Similarly there is no pre-emption in the following scenarios: a man gave the house as dowry; a woman paid her husband the house as Khul'ah; a man gives the house as rent for another house; he gave the house to make Sulh (reconciliation) in a murder dispute; or he gave it to free a slave; or he made Sulh on it by denial or silence. As for Sulh by admission, there is Shuf'ah for such a Sulh is deemed a sale.

Question 1073) How does the Shafi' claim his right after the two Talabs?

A: He will present the defendant i.e. the buyer to the judge. If the defendant admits to the plaintiff's claim, it will be ruled against him i.e. the judge will order the defendant to surrender the house or property to the plaintiff and take the price from him. If the buyer denies the plaintiff's right, the judge will impose upon the plaintiff that he present his evidence. If he cannot produce evidence, the buyer will be made to take an oath. He will swear by Allaah that he does not know that the plaintiff is the owner of the property/house by way of pre-emption. If he refuses to take an oath or if the plaintiff obtains proof, then the judge will ask, "Did you buy it or not?" If he denies having bought it, the judge will ask the plaintiff to produce evidence that he did. If he cannot, then the buyer will be made to swear, "By Allaah, I did not buy it/ By Allaah this plaintiff is not entitled to pre-emption on this house as per the reason he claims."

Question 1074) Must the plaintiff bring the price to the courtroom when he presents his claim?

A: He need not bring it before the judge's decision. If the judge rules in his favour then he must bring the price?

Question 1075) A Shafi' bought a house by way of pre-emption. He then sees a defect or had not seen the house. Can he return it because of the defect or right of sight?

A: Yes.

Question 1076) Can the Shafi' take the seller to court?

A: If the house is still in the hands of the seller, he may take him to the judge. The judge will not hear the evidence until the buyer is presented. The judge will then cancel the sale with the buyer's testimony. The Shuf'ah is returned to the seller and the responsibility rests on him.

Question 1077) The Shafi' did not make witnesses when he learnt of the sale. What is the ruling?

A: If he did not make anyone witness to his claim when he learnt of the sale and he was able to do so, then his right is void. Similarly if he did make witnesses at the gathering, but failed to testify by one of the two parties or the land, then his right is void.

Question 1078) He agreed to give up his return in return for a payment. What is the ruling?

A: His right is void and it is Wajib for him to return the money.

Question 1079) The Shafi' or the buyer dies. Is the right forfeited?

A: The right is void with the death of the Shafi', but not with the death of the buyer.

Question 1080) The Shafi' sold the property through which he has a right on the claimed property. What is the ruling?

A: If he sold it before the ruling was given, then his right is forfeited.

Question 1081) A man sells a house and appoints the Shafi' as his agent to sell the house. The agent conducts the sale. Does he still have the right of pre-emption?

A: No.

Question 1082) And if the Shafi' was the agent for the buyer?

A: He retains his right. It is not forfeited by buying it for another party.

Question 1083) A man wants to buy a house but fears making a loss in the deal. A man guarantees him that it is a good deal from the seller. That man was also the Shafi' does his right still exist?

A: He does not have the right any more, because the deal was concluded because of him.

Question 1084) A man sold the house with right of withdrawal. Can the Shafi' claim his right?

A: No, because the ownership is still with the seller in this case.

Question 1085) A man sold his house with the right of withdrawal. He then forfeits the right. Can the Shafi' now claim his right?

A: Yes.

Question 1086) A man bought the house with the right of withdrawal. Can the Shafi' claim his right?

A: Yes, because in this scenario the ownership has passed from the seller.

Question 1087) If the house is bought in a Fasid transaction, how is the right of pre-emption affected?

A: There is no right of pre-emption in a Fasid transaction. The two parties however should rescind their sale. Upon the cancellation the right can be claimed.

Question 1088) A Zimmi bought a house with pigs/wine. The Shafi' is a Muslim or Zimmi. How will the Shafi' pay?

A: The Zimmi will pay with an equivalent wine/the price of the pig. The Muslim will pay the price of the wine/pig.

Question 1089) Whose word will be accepted when the Shafi' and buyer dispute the price?

A: The buyer's word will be accepted under oath.

Question 1090) What will the judge rule if both present evidence?

A: According to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله he will rule according to the evidence of the Shafi'. According to Imaam Abu Yusuf رحمته الله he will rule according to the buyer's evidence.

Question 1091) The buyer and the seller disagree on the price. The buyer claimed a higher price than the seller. Which price will the Shafi' pay?

A: If the seller has taken the price then the buyer's word will be taken. If he has not, the seller's word will be taken.

Question 1092) After the sale, the seller reduced the price or the buyer offered more. Both parties were pleased with this. Which price must the Shafi' pay?

A: If the seller reduced part of the price, then the Shafi' pays the reduced price. If he reduced the entire price, then it is not reduced for

the Shafi' and is deemed a separate transaction. If the buyer offered more, then the Shafi' is not liable for the extra amount.

Question 1093) A man bought a house on credit. The Shafi' claimed the house and the court ruled in his favour. Can he be forced to pay immediately?

A: He can take the house and pay immediately; or he can wait until the expiry of the period and then pay and take the house. He cannot be forced to pay immediately.

Question 1094) A man buys a house with a measured or weighed good/s. What must the Shafi' pay?

A: He must pay the same measured or weighed good/s.

Question 1095) A man buys a house with trade goods. What must the Shafi' pay?

A: The price of the goods.

Question 1096) A man buys a house with another property. What must the Shafi' pay?

A: Each house will be valued at the price of the other house.

Question 1097) A house was sold and the Shafi' told that it was sold for 1000 so he renounces his right. He then learns that it was sold for less than that or for wheat/barley worth 1000 or more. Does he still have the right of pre-emption?

A: His renouncing is ignored and he retains his right, because the information was deceptive.

Question 1098) The Shafi' heard that the house was sold for 1000 Dirham and renounce his right. He then learnt that it was sold in Dinars worth 1000 Dirham. Is this deception?

A: This is not deception. His right is renounced.

Question 1099) The Shafi' heard that a certain person was buying the house and hence renounced his right of pre-emption. He then learnt that someone else actually bought it. Does he have a right again?

A: He still has his right of pre-emption.

Question 1100) A man appoints an agent to buy a house for him. He bought a house. The Shafi' then demands the house. With who will his dispute be?

A: The defendant will be the agent. If the agent handed the house to the principle, the principle will be the defendant.

Question 1101) A man bought a land and built a building/ planted a tree on it. The judge then ruled the land for the Shafi'. What happens to the tree/building?

A: He can pay for the building/tree a price free of the land or he can demand that the buyer remove them.

Question 1102) The Shafi' acquired a land though his right and then planted a tree/ built a building there. It then transpires that someone else has a right to the land. What can he do?

A: He can claim the price he paid, but not the price of the building/tree.

Question 1103) Through no human intervention, the house got destroyed or burnt or the trees of the gardens dried up. The court then rules in the Shafi's favour. How much must he pay?

A: He must pay the full amount or he may rescind his offer.

Question 1104) What must the Shafi' pay if the buyer destroyed the house and left the land vacant?

A: He may pay the proportionate price or he may renounce his right of pre-emption. He may not claim the ruins.

Question 1105) A man bought a land with fruit-laden trees. The Shafi' received his right. Does he take the land with or without the trees?

A: He takes it with the fruit.¹⁵⁵

Question 1106) A man buys a land with trees and fruit and cuts off the fruit. What will the Shafi' pay?

A: The Shafi' will take what is left at the proportionate price.

Question 1107) A man bought a house and the Shafi' renounced his right. The buyer then returns the house on right of withdrawal/right of sight/defect. Is the Shafi's right reinstated?

A: If it was returned by a court order then there is no reinstating. If it was without the court or a mutually agreed rescinding, then his right is reinstated.

Question 1108) The partners in a property divided the property amongst themselves. Can the neighbour claim Shuf'ah?

A: There is no pre-emption for the neighbour in this scenario. Division is not a sale. It is a distinction of rights.

Question 1109) A house is sold and there are several people with a right of pre-emption to it. How will the house be divided amongst them?

A: It will be divided according to their number, not according to what they own.

Question 1110) Explain by means of an example.

A: Three men share a house whereby one has half, the second a third and the third a sixth. The owner of the half sells his half. The

¹⁵⁵ If the fruit was stipulated in the sale, because the fruit is not included without stipulation.

other two have claims to equal amount in it, the one with a sixth will not get less than the other.

Question 1111) The sale agreement was made upon a price, but then the buyer gave a cloth instead. What will the Shafi' pay?

A: He will pay the first price. The agreement was not upon the cloth. The cloth was acquired in a second transaction.

Question 1112) Are there situation where the right is forfeited?

A: If the entire property except for the strip adjoining the neighbour's property is sold then the neighbour has no right even if the strip is only an arm-span wide, because his land does not join the sold land. This is a device people use to avoid per-emption.

Question 1113) Are there other devices like this?

A: Yes, someone buys a share of the house and then buys the rest. The neighbour does not have a right in the second share [because the one with an existing share has a prior right].

Question 1114) Are these devices not Makruh?

A: According to Imaam Abu Yusuf رحمته الله it is not Makruh. According to Imaam Muhammed رحمته الله it is Makruh.

Kitabush Sharikah [Partnership]

Question 1115) What is Sharikah?

A: It is the mixing of different wealth in such a way that a distinction is no longer drawn between them. This can either be by way of a mixing from two parties, or by way of receiving a joint property without them having mixed it e.g. inheritance or a joint gift for two parties, or when one of the parties merges his wealth in the wealth of the other without any action in a way that there is no longer a distinction between their wealth.

Question 1116) What kinds of partnerships are there?

A: There are two kinds: Shirkatul Amlak [wealth] and Shirkatul 'Uqud [contracts].

Question 1117) What is Shirkatul Amlak?

A: This occurs for example, when two people receive a single commodity jointly as inheritance or they buy the same thing jointly.

Question 1118) What is the ruling of this partnership?

A: The partners may not transact in their share without the permission of the other. Each one with regard to the other's share is like a stranger.

Question 1119) What is a partnership of contracts?

A: There are four types, each which has its own regulations:

1. Shirkah Mufawadah [Negotiated]
2. Shirkah 'Inan [Restricted]
3. Shirkatus Sanai' [craftmen]
4. Shirkatul Wujuh [reputation]

Question 1120) What is the definition and regulations of Shirkatul Mufawadah?

A: It is the partnership of two men whereby they will be equal in their wealth, transacting, debts and it encompasses Wakalah and Kafalah (agency and debts). Whatever any of them buy will belong to the partnership, except their food and clothing for the family. Whatever debt one of them incurs by way of something which can be jointly owned, and then the other partner is responsible for its payment as well. This kind of partnership is permissible between adult, intelligent Muslims. It is not allowed between a freeman and a slave; or between a child and an adult; or between a Muslim and a Kafir.

Question 1121) Two men conclude a Shirkatul Mufawadah agreement. One of them inherits such wealth which can be jointly

At-Tashil ad-Daruri (Part 1)

owned or he receives such a gift. The wealth has reached him. Does the partnership stay as it was?

A: The partnership is nullified and becomes a Shirkatul 'Inan.

Question 1122) Are there any other conditions for Shirkatul Mufawadah?

A: Yes, it cannot be concluded except with Dirhams, Dinars and currency. It is not permissible in anything else, unless it is something which people treat as an exchange medium such as gold nuggets.

Question 1123) They have neither Dirham nor Dinar. They only have goods. How can they become partners?

A: The one sells half of his goods for half the goods of the other. The partnership will be concluded.

Question 1124) What is Shirkatul 'Inan?

A: It is the partnership of two people in a specific or general kind of trade.

Question 1125) What are the regulations of this partnership?

A: It is permissible and entails Wakalah [agency], but not Kafalah [responsibility for another's debts]. It means that if one of them bought something for the partnership, the price can only be demanded from him, not from the other. That partner will then go to the other partner to claim his share of the payment. The debts of one is not the responsibility of the other.

Question 1126) Can there be a difference in their contributions or must it be the same?

A: The capital can be the same or different, just as the profit shares can differ even if the capital shares are the same.

At-Tashil ad-Daruri (Part 1)

Question 1127) Can this partnership be established where each one gives only part of his wealth, not all?

A: Yes.

Question 1128) With what is this partnership established?

A: As explained in Mufawadah, it is established with Dirhams, Dinars or whatever people may be using as mediums of exchange, such as gold nuggets.

Question 1129) Can it be established with one contributing Dirhams and the other Dinars?

A: Yes.

Question 1130) If both of their capital or the capital of one of them perishes before they jointly buy anything, then what happens to the partnership?

A: It is void.

Question 1131) If one of them bought something and the capital of the other perishes before the purchase, what is the ruling between them?

A: The purchase is between them as per their agreement, and the one who bought the goods will seek claim from the partner his share of the price.

Question 1132) Two men wish to engage in an 'Inan partnership without mixing their wealth. Is the partnership valid?

A: Yes, it is not a condition of 'Inan that their wealth mix.

Question 1133) An 'Inan partnership was concluded. One of the partners stipulated for himself a specified amount of Dirhams. What is the ruling?

A: The partnership is not valid in this case. It is possible that the total profit will not be more than the amount he demands.

Question 1134) What options do the partners in a Mufawadah and 'Inan agreement have?

A: Each may invest the capital, may give it to a Mudarabah, may appoint an agent to transact in it, may give and accept collateral, may hire a third party over it, and may sell for cash or credit. Each one acts on the basis of a trust.

Question 1135) What is a form of a Sana'i [craftsmen] partnership?

A: Two tailors or dyers for example form a partnership to accept work and share the earnings.

Question 1136) What obligates each of them?

A: Whatever work one of them accepts and becomes compulsory upon him, obligates the other partner as well.

Question 1137) If only one did a job, is he entitled to the entire fee?

A: No, it must be shared between them.

Question 1138) What is Shirkatul Wujuh?

A: Two men form a partnership that they will buy goods based on their reputations and sell them, whereas they have no capital. This kind of partnership is permissible. Each will be a Wakil [agent] for the other in what he buys.

Question 1139) Can they share the profits in different proportions to the goods?

A: No, if they stipulated that the goods will be equal amongst them then the profit must be the same, if they stipulated that the goods will be in thirds, then the profits will be the same.

Question 1140) What is the ruling on partnerships in wood-gathering, grass-gathering and hunting?

A: This is not permissible. Whatever wood, grass or prey he gets is his alone. They cannot be partners in capital or profits.

Question 1141) A man owns a mule and another owns a water-bag. They made a partnership to fetch water and sell it to the people on condition that both will share in the profits. Is this partnership valid?

A: No.

Question 1142) If one of them uses both to fetch the water, how will the earnings be shared?

A: The entire earnings is for the one who fetched the water. If the worker was the owner of the mule he owes the other the fee for the bag. If he was the owner of the bag he owes the fee of the mule.

Question 1143) Two men concluded a Fasid partnership. How is the earnings shared?

A: According to their capital contribution ratio. Any stipulation to the contrary is void.

Question 1144) Can one partner pay the Zakah of the other?

A: He may not, except with the other's permission.

Question 1145) If he gave permission and then both paid the Zakah of one of them, is the partner liable?

A: According to Imaam Abu Hanifa رحمته الله he must reimburse him, whether he knew that he paid the Zakah or not. The other two Imams say that he is not liable if he did not know that the Zakah was already paid.

Question 1146) Is the partnership ever nullified without the partners cancelling it?

A: It is nullified when one of the partners dies or abandons Islaam and flees to the lands of the Kuffar.

Kitabul Mudarabah

Question 1147) What is Mudarabah linguistically and in Sharī'ah?

A: The word is derived from *Darb* in the meaning of travelling (i.e. to travel the earth). In Sharī'ah it is a contract whereby profits are given to one partner in lieu of capital and to the other in lieu of labour. The capital must be wealth which we discussed before.

Question 1148) What are the conditions for the validity of the Mudarabah?

A: There are two conditions:

1. That the wealth be so handed over to the Mudarib so that the capital contributors have no control over it.
2. That the profits be divided on a ratio basis and no party will claim a specific amount of Dirhams.

Question 1149) If the contract is correct, what may the worker do?

A: If the Mudarabah is general, and not confined to any specific time, place or goods, then the Mudarib may buy, sell, travel, invest and appoint agents as he wishes. If the capital contributor has specified certain places/goods then the worker may not exceed that.

Question 1150) What is the ruling of the capital contributor stipulating a time period for the contract?

A: It is permissible. The Mudarib may not exceed the time period, as when the specified date is reached the Mudarabah is terminated.

Question 1151) Can the Mudarib hand the capital over to another person [second Mudarib]?

A: Only if the capital contributor permits him or said, "Work as you see fit."

Question 1152) If the first Mudarib handed over the capital over to a second party without permission, is he liable for the amount?

A: He is not liable by the mere contract with the second Mudarib or by the second's transacting with the money. He is liable once the second Mudarib earns a profit to pay the money to the capital contributor.¹⁵⁶

Question 1153) The capital-contributor gave the money to the Mudarib on condition that they would share the profits 50-50. He also permitted him to give the money to another party as Mudarabah. What is the ruling?

A: It is permissible.

Question 1154) How will the profit be divided amongst these three parties?

A: If the capital-contributor had stipulated half the profit for himself and said, "What Allaah gives will be half-half between us," and the Mudarib gave the money to a second Mudarib on the terms of the second receiving two-thirds of profits, then the capital contributor will receive his half, the first Mudarib one-sixth and the second Mudarib one-third.

If the capital-contributor said, "Whatever Allaah gives you is between us half-half," and the Mudarib said to the second Mudarib, "Two-thirds of the profit you earn is mine and a third is for you," then the third is for the second Mudarib and the two-thirds will be divided between the first Mudarib and the capital contributor.

¹⁵⁶ Once the capital-contributor makes the first Mudarib responsible, the contract with the second is validated and the profits will be divided as what the two agreed upon.

Question 1155) If the capital-contributor stipulates half of the profits for himself, "Half of what Allaah gives is for me," and the Mudarib offers the second Mudarib half of the total profits, how will the profits be shared?

A: The Capital-contributor will receive half, the second Mudarib will get his half and there is nothing for the first Mudarib.

Question 1156) How will the profits be shared in the above scenario if the second Mudarib was promised two-thirds of the total?

A: They will share it in half as above. In addition, the first Mudarib is liable to pay the second Mudarib from his own money to the value of one-sixth of the profits so that his receipts reach the two-thirds agreed upon.

Question 1157) The Mudarib sees the father/son of the capital-contributor being sold as slaves in the market. Can he buy them?

A: He may not buy them or anyone else who is automatically freed in owner's possession.

Question 1158) If he did buy them, what is the ruling?

A: It will be ruled that he bought them for himself and that will not be from the money of the partnership.

Question 1159) Can the Mudarib buy a slave who will be freed in his possession?

A: If there is a profit in the money, then he may not buy them. If does buy them, then he must pay the partnership back. If there was no profit in the money then he may buy them.

Question 1160) The value of the slaves increased after he bought them and a profit emerged. Can he free them from his share and owe the capital-contributor the balance?

A: He will free his share in the slaves. He does not owe the partner anything. The freed slave will earn and repay the partner.

Question 1161) Can the Mudarib sell on credit?

A: He may sell on cash or credit, because these are necessities of trade.

Question 1162) If the Mudarib bought a male/female slave from the capital of the partnership can he let them get married?

A: No.

Question 1163) What is the status of the transactions of the Mudarib if the capital-contributor has removed him?

A: If he did not know and he bought/sold, the transaction is valid. If he knew and he has goods of the partnership in his possession then he may still sell them despite being removed. He may not however buy anything with the obtained price. If at the time of his removal the partnership's wealth is Dirham and Dinar then he may not transact with them.

Question 1164) The Mudarib and the capital-contributor have separated and there remain outstanding debts of the partnership. From whom will the debts be claimed?

A: If there is a profit amount in the wealth of the partnership then the judge will force the Mudarib to pay. If there is no debt then the judge will order him, "Make the capital-contributor the agent for paying the debt."

Question 1165) What happens if the capital or the profit is destroyed?

A: Any losses will be deducted from the profits not the capital, even if the loss is greater than the profits. The Mudarib will not be liable for the loss.

Question 1166) After the profits were shared, the entire assets or part of it was destroyed. What do they do?

A: They will return the profits until the capital-contributor restores the capital. If there is an excess then they may share it. If there is a shortfall in the capital the Mudarib is not liable.

Question 1167) They divide the profits and terminate the partnership. They establish a second partnership and all or some of the assets are lost. Do they return the profits of the first business?

A: No, there is no relation between the profit of the first business and the second business.

Question 1168) How does the partnership become void?

A: When either party dies; or if the capital contributor abandons Islaam and goes to the land of the Kuffar – may Allaah save us. It is also terminated if the capital-contributor stipulated a time limit which expires.

Kitabul Wakalah [Agency]

Question 1169) What is Wakalah?

A: In Shari'ah it is to appoint someone else in one's place to perform a known transaction. Whatever transaction one is allowed to do oneself, one may appoint a Wakil [agent] to perform.

Question 1170) Why does the Shari'ah recognise Wakalah?

A: Because people may need someone else to perform a transaction due to some weakness or absence.

Question 1171) What kinds of transactions do agents perform?

A: There are two broad categories:

1. That which is attributed to himself e.g. buying, selling and hiring. The rights and duties of these contracts are attributed to the agent, not the Muwakkil [principle]. The agent hands over sold goods, takes the price, takes goods bought, takes the price and handles the dispute in defective goods bought.

2. That which is attributed to the principle e.g. Marriage, Khul', and Sulh or settlement of blood money. The rights and duties of these contracts are attributed to the principle, not the agent. The bride will thus not claim her dowry from the agent, nor is the agent responsible for bringing her to her groom.

Question 1172) Can one appoint an agent [lawyer] to handle and settle disputes in rights; thus an agent of the plaintiff presents a correct claim and/or the agent of the defendant presents a correct response and whatever relates to the dispute?

A: Yes.

Question 1173) Can an agent be appointed in a dispute without the consent of the party?

A: According to Imaam Abu Hanifa رحمته الله an agent can only be appointed with the consent of the disputant unless he is away by the distance of three days' journey or more; or is ill. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is permissible without the consent of the disputant.

Question 1174) What is the ruling on appointing an agent to fulfil one's rights?

A: It is permissible, except in the case of Hudud [penal punishment] and Qisas [death penalty]. The principle must attend the hearing himself in these two cases.

Question 1175) Can an agent be appointed in currency and Salam transactions?

A: Yes. Thus if the agent separates from the other party before taking possession, then the contract is void. The principle leaving will not be considered.

Question 1176) Are there any conditions for the validity of the agency?

A: Yes, the principle must be a person permitted to transact and who is obligates under laws. The agent must be a person who understands buying and selling and can fulfil its aim.

Question 1177) An adult free man appoints an agent like him; or a slave permitted to trade appoints one like him. What is the status of these agencies?

A: Both are permissible.

Question 1178) A man appoints as agent a child of the age of incapacitation who nevertheless understands buying and selling; or he appoints an incapacitated slave.

A: The agencies are valid, but rights and duties are attributed to the principle, not the agents.

Question 1179) The appointed agent sold something on behalf of the principle. The principle demands the price from the buyer. What must the buyer do?

A: The buyer may refuse to pay the principle. If he does pay, the agent may not demand the payment from him a second time.

Question 1180) Are there any necessary conditions when appointing an agent for buying?

A: Yes, the type, description and maximum price must be stipulated unless general permission is specifically given e.g. "Buy for me what you deem right."

Question 1181) An agent bought and took possession of some goods. He finds a defect in them. Can he return them to the seller?

A: He may return them as long as they are in his possession. Once he gives it to the principle, he may not return it unless the principle permits him.

Question 1182) An agent bought goods for the principle with his own money. How is he reimbursed?

A: He can claim the amount from the principle and may retain the goods until he is paid.

Question 1183) The agent is holding some goods which perish before he can hand them over to the principle. What is the ruling?

A: The goods are deemed to have perished from the principle. The principle is not absolved of paying the price.

Question 1184) If the goods perished while the agent was retaining them in order to receive his payment of the goods, what is the ruling?

A: According to Imaam Abu Yusuf رحمته الله it has perished with the liability of collateral. According to Imaam Muhammed رحمته الله¹⁵⁷ it has perished with the liability of a trade goods.

Question 1185) A man appoints two agents. Do they have to work jointly in the work of the agency?

A: Yes, each of them may not transact in what they were appointed without the other. Exception are if they were appointed to as representatives in a [court] dispute or to divorce his wife without compensation; or similarly to set free his slave; or return a *wadi'ah* (commodity under one's safe keeping) he was holding; or to settle his debt.

Question 1186) Can an agent appoint an agent to do what he was appointed to do?

A: He may not, unless the principle permits him or said, "Work as you see fit."

¹⁵⁷ And according to Imaam Abu Hanifa رحمته الله [al-Jawharah]

At-Tashil ad-Daruri (Part 1)

Question 1187) What is the ruling if the agent appointed a second agent without permission and the second agent concluded a transaction?

A: If he concluded the transaction in the presence of the original agent, it is correct in regards the rights of the original agent. It is also correct if he was not present but validated it. If not, then it is not valid.

Question 1188) Are there restrictions upon the transactions of the agent?

A: Yes, according to Imaam Abu Hanifa رحمته الله the agent of buying and selling may not transact with his father, grandfather, son, grandson, wife, slave and Mukatab [contracted slave]. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he may transact with them at market rates but not with his slave or Mukatab.

Question 1189) Can an agent of selling, sell cheap and expansive prices?

A: According to Imaam Abu Hanifa رحمته الله he may. According to Imaam Abu Yusuf رحمته الله and to Imaam Muhammed رحمته الله he may not sell at such a loss people would not accept in a like item (not sell lower than current related price).

Question 1190) What are the restrictions on the price the buying agent pays?

A: He may pay at market price up to maximum which people would tolerate in buying such an item. He may not pay such an excessive price which people would not tolerate.

Question 1191) What is an excessive price which people would not tolerate?

A: A price no trader would ever value the goods at.

Question 1192) An agent was appointed to sell his principle's slave and he sold half the slave. Is that permissible?

At-Tashil ad-Daruri (Part 1)

A: According to Imaam Abu Hanifa رحمته الله it is permissible. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is not permissible unless he sells the other half as well.

Question 1193) What is the ruling of an agent appointed to buy a slave and he bought half?

A: This is a suspended sale. If he buys the second half the principle is liable.

Question 1194) The agent was appointed to buy 10 Ritl of meat for 1 Dirham. He bought 20 for 1 Dirham of such meat which is normally sold @ 10 Ritl for a Dirham. What is the principle liable for?

A: According to Imaam Abu Hanifa رحمته الله he is liable for 10 Ritl at a half Dirham. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he is liable for 20 @ 1 Dirham.

Question 1195) An agent was appointed to buy a specific item. Can he buy it for himself?

A: No, if he does buy it for himself the purchase is for the principle.

Question 1196) An agent was appointed to buy any slave. He bought a slave. To whom does the slave belong?

A: He belongs to the agent unless he said, "I intended it for the principle/I bought it with the principle's money."

Question 1197) Can an agent appointed for dispute retain whatever he obtained from the dispute?

A: According to Imaam Abu Hanifa رحمته الله, Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the agent for dispute is an agent for taking possession as well. According to Imaam Zufar رحمته الله he may not take possession.

Question 1198) Can an agent be authorised to collect a debt dispute [in court]?

A: According to Imaam Abu Hanifa رحمته الله تعالى an agent for debt is an agent for dispute as well. According to the other two Imams he is not.

Question 1199) Can an agent for dispute confess against his own principle?

A: He may confess to the judge against his own principle. According to Imaam Abu Hanifa رحمته الله تعالى and Imaam Muhammed رحمته الله تعالى he may not confess to anyone besides the judge, unless he withdraws from the dispute. According to Imaam Abu Yusuf رحمته الله تعالى he may confess to someone besides the judge as well.

Question 1200) A man claims that he is an agent for collection of debt on behalf of an absent principle. Will the debtor be ordered to pay him?

A: If the debtor believes him, he will be ordered to do so.

Question 1201) The judge ordered the debtor to pay the debt to the one who claimed to be the agent because the debtor believed him. The absent creditor then comes. What will the judge order the agent and the debtor?

A: If the creditor verifies the agent then there is no need for further enquiries. If he does not, then the debtor must pay the creditor again and claim the amount he paid the "agent" from the "agent," if he still has the amount with him.

Question 1202) A man said to someone who was keeping a *wadi'ah* (commodity under one's safe keeping), "I am appointed to collect the *wadi'ah*. If the person believed him will he be ordered to hand it to the "agent"?

A: No.

Question 1203) An agent sold goods. He gave a pledge of responsibility for the buyer's debt. Is this valid?

A: No, his pledge is void [lest the claimant and the defendant become the same person].

Question 1204) If the principle terminates the agency and the agent still transacts after that, what is the ruling?

A: If he knew that he has been removed then his transacting is not permissible. If he did not receive the notice of termination then he is still the agent and his transactions are valid and binding upon the principle, until he learns of the termination.

Question 1205) Under what circumstances does the agency dissolve?

A: They are as follows:

1. Death of the principle.
2. His complete insanity (lasting for 1 year or more. *Zalai*).
3. His leaving for the lands of the Kuffar as an apostate.¹⁵⁸
4. Separation of partners where one of the partners was agent for the other.
5. When the *Mukatab* is unable to fulfil his contract of buying his freedom then the agent he appointed is no longer his agent.
6. Renewal of incapacitation upon a slave who was permitted to trade and appointed agent. In these scenarios the agency is terminated whether the agent knows or not.
7. Death of the agent.
8. His (the agents) complete insanity.
9. His leaving for the lands of the Kuffar as an apostate, unless he returns as a Muslim before the decision is passed, then it is as if he never did that and the agent remains upon his agency.
10. The principle personally transacts what he appointed the agent to do.

¹⁵⁸ If he returns as a Muslim before the decision is passed, then it is as if he never did that and the agent remains upon his agency.

Kitabul Kafalah [Guarantee]

Question 1206) What is Kafalah?

A: To undertake a liability for another's liability when it is claimed.

Question 1207) Are there different categories of Kafalah?

A: Yes, Kafalah of a person [bail] and Kafalah of wealth.

Question 1208) How is guarantee of a person effected?

A: By someone saying, "I am guarantee for his person/ neck/ soul/ body/ head/ half/ third." Or if he says, "I am responsible for him/ he is upon me/ he is to me/ I am his surety/ I stand in his stead."

Question 1209) What is the obligation of the *Kafil* [guarantor] in a guarantee of person?

A: He must present the *Makful bihi* [the one for whom presentation of a person has been guaranteed]. If a condition of the guarantee was presentation at a specific time, then he is obliged to do so when the *Makful lahu* [one given the guarantee to] demands him at that time. If he does not present him, then the judge will detain him until he does present him.

Question 1210) How does the guarantor become absolved of the guarantee of person?

A: He is absolved when he presents the *Makful bihi* in a place where the *Makful lahu* can conduct his case against him. He is also absolved upon the death of the *Makful bihi*.

Question 1211) Is he absolved if he guaranteed to present him to the judge but presents him at the market or a desert?

A: He is absolved if he presents him in the market, but not in the desert.

Question 1212) The guarantor guaranteed that he would be liable for the liability of the *Makful bihi* if he does not fulfil it. He does not present him at the time which was stipulated. What is the ruling?

A: He is obliged to pay the liability and is not absolved of presenting the *Makful bihi*.

Question 1213) What is the ruling of Kafalah of a person in Hudud and Qisas?

A: It is not allowed according to Imaam Abu Hanifa رحمته الله عليه.¹⁵⁹

Question 1214) What is Guarantee of Wealth?

A: It is a guarantee of the guarantor that he will settle amount owing to the one entitled. This is allowed in Shari'ah, whether the *Makful bihi* [the amount] is known or not, as long as the debt is valid.¹⁶⁰

Question 1215) What are the words of enacting the guarantee?

A: "I guarantee 1000 Dirham on his behalf/ I stand guarantee for what he owes you or what is due to you from this sale."

Question 1216) When the guarantee is given, can the *Makful lahu* claim from the *Makful 'anhu* [the one for whose debt the guarantee is given]?

¹⁵⁹ According to *al-Jawharah* it means that according to him he will not be forced to undertake the guarantee. According to the other two he will be forced in the case of slander.... All of them agree that there is no guarantee in the actual punishment as that cannot be fulfilled by a third party.

¹⁶⁰ E.g. price of a sale, fines for violations, compensation for destroying property, loans etc.

A: The *Makful lahu* can claim from the *Makful 'anhu* or the guarantor.

Question 1217) Can conditions be set for the guarantee?

A: Yes, for example he says, "I am responsible for what you sold him/I am responsible for what he usurped from you."

Question 1218) The guarantor said, "I guarantee whatever he owes you." The guarantor and *Makful 'anhu* then disagree on the amount. What will be decided between them?

A: He will pay whatever according to the evidence produced, e.g. it is proven that the *Makful 'anhu* owes 1000 Dirham, then he is liable for 1000 Dirham.

Question 1219) If there is no evidence?

A: The guarantor's word will be taken under oath for whatever amount he admits to.

Question 1220) If the *Makful 'anhu* admits to an amount greater than that which the guarantor said, will he be believed?

A: He will be believed in terms of himself, but not in terms of the guarantor.

Question 1221) Can a guarantee be given without the assent of the *Makful 'anhu*?

A: Yes. If the guarantee is given with his assent, the guarantor will claim the amount from him. If he did not give his assent, the guarantor cannot claim from him.

Question 1222) When can the guarantor claim the money from the *Makful 'anhu*?

A: He cannot claim until he has paid the debt of the *Makful 'anhu*.

Question 1223) A man gave guarantee for 'Amr. The creditor then pursues the guarantor. What can he do?

A: He should pursue the *Makful 'anhu* until he is left alone.

Question 1224) The creditor absolves the debtor; or the debtor settles the debt. Are there any responsibilities of the guarantee left on the guarantor?

A: No, he is entirely absolved.

Question 1225) What is the ruling if the creditor absolves the guarantor?

A: The guarantor is absolved, but not the *Makful 'anhu*.

Question 1226) Can the guarantee be given with a condition?

A: No.

Question 1227) Can the guarantor guarantee for the buyer and the seller?

A: If he guarantees to pay the amount of the buyer it is valid. If he guarantees to produce the items sold on behalf of the seller then it is not valid.

Question 1228) A man hires a mount to load goods. Another man guarantees him transport of the load. Is the guarantee valid?

A: If he guarantees the specific mount, then it is not valid. If it is not specific then it is valid.

Question 1229) Must the *Makful lahu* accept the guarantee for it to be valid?

A: The guarantee is not valid unless the *Makful lahu* accepts it in the Majlis of the transaction. An exception is if a sick person instructs his heir to stand as his guarantee. In that case the guarantee is valid even though the creditor was not present.

Question 1230) Two men sought credit and stood guarantee for each other. They paid his debt. Can he seek imbursement from the second debtor?

A: No, unless he paid an amount above what he personally owed.

Question 1231) Two men stood guarantee for a third man having a debt of 1000. Both would also be guarantors for each other. One of them paid part of the amount or the entire amount. Can he ask for reimbursement from his partner?

A: Yes, he can ask for half the amount he paid, be it a little or much.

Question 1232) Can a guarantee be given for Kitabah [contract whereby a slave pays a specified amount for his freedom]?

A: No, neither a free man nor a slave may stand guarantee in this case because it is not a true debt.

Question 1233) A man dies without any assets and has unpaid debt. Can someone stand guarantee to the creditors for his debts?

A: Not according to Imaam Abu Hanifa رحمته الله but the other two Imams permit it.

Kitabul Hawalah [Transfer of debt]

Question 1234) What is Hawalah?

A: It is the transfer of debt from one person's responsibility to another's responsibility. It is permissible with debts, not goods and rights.

Question 1235) Is the consent of both parties a condition?

A: The consent of the Muhil (who is the debtor); Muhtal (creditor); and *Muhtal 'alayhi* (the one who undertakes to pay the debt) are all required.

Question 1236) Can the creditor then claim from the original debtor?

A: Once the debt is transferred the debtor is absolved. The creditor may not claim from him unless his rights become *Tawa*.

Question 1237) What is the meaning of *Tawa*? How does it arise?

A: *Tawa* is destruction. It arises according to Imaam Abu Hanifa رحمته الله in one of two ways – if the *Muhtal 'alayhi* denies the transfer under oath and the creditor does not have proof; or if the *Muhtal 'alayhi* dies bankrupt. The other two Imams add a third form of *Tawa* which is if the court rules that the *Muhtal 'alayhi* is bankrupt while still alive.

Question 1238) If the *Muhtal 'alayhi* demands from the Muhil an amount equal to the amount transferred and the Muhil says, "I do not owe you anything. I transferred a debt you owed me," will his word be accepted?

A: No, he will owe the amount equal to the debt.

Question 1239) If the debtor claims the transferred amount from the Muhtal, "I transferred to you an amount for you to take on my

behalf." The *Muhtal* denies this, "You transferred a debt you owed me." How will a decision be made?

A: The Muhil's word will be accepted under oath.

Question 1240) What is the ruling of *safatij* (Bills of Exchange) according to Fuqaha?

A: Makruh.

Question 1241) What does the word and term mean?

A: It is the plural of *Suftajah* meaning a paper. It is a loan given so that the lender is safe in his travel.¹⁶¹

Kitabus Sulh [Compromise/Settlement]

Question 1242) What is Sulh?

A: A dispute erupts between two parties concerning rights. They agree to accept part of what is disputed and renounce the remaining claim. This is called Sulh. "Sulh is best."

Question 1243) How many types of Sulh are there?

A: There are three categories:

1. Sulh with confession.
2. Sulh with silence.
3. Sulh with denial.

All three are permissible in Shari'ah.

Question 1244) What is the meaning of Sulh with confession?

¹⁶¹ E.g. a man gives a trader x amount of Dirham on condition that the trader's agent at another city will pay him that amount. If done without conditions then there is no harm. If safety of the road is stipulated then it is Makruh because that is deriving benefit from a loan [*al-Jawharah*]

A: The defendant confesses to a right against him. The plaintiff then compromises upon something.

Question 1245) What is the meaning of Sulh with silence?

A: The defendant neither admits to nor denies the claim, but is pleased to compromise to free himself of the dispute.

Question 1246) What is Sulh with denial?

A: The defendant denies that there is a claim against him but is willing to compromise to end the dispute.

Question 1247) What is the ruling of Sulh with confession?

A: If it is compromise of money on money then it is treated as a sale. If it is on a benefit it is treated as a hire.

Question 1248) What is the ruling of Sulh with denial or silence?

A: These are implemented with oaths. With regards to the defendant it is deemed the termination of the dispute. With regards to the plaintiff it is deemed an exchange.

Question 1249) What is the ruling of pre-emption if they compromised with a house or about a house?

A: Pre-emption arises if they compromised with giving a house. It does not arise if they compromised about a disputed house.

Question 1250) If the compromise is with confession, can the defendant demand his share which he is entitled to under the compromise?

A: Yes, he can claim what was offered in exchange.

Question 1251) The defendant gave up in a compromise of silence or denial. It is discovered that a third party is entitled to the disputed item. What does the plaintiff do?

A: He will return what the defendant gave him and continue the case with the new claimant. If his claim is established in part of the disputed item, then he will have returned that proportion from whatever the defendant had given in exchange. He will continue the remainder of the dispute with the new claimant.

Question 1252) A man claimed a right in a house but did not specify the right. The defendant gave him a substitute as compromise on the claim. Someone then claims part of the house. Will the original plaintiff return what the defendant gave him?

A: No, he need not return anything.¹⁶²

Question 1253) Can compromise be made on a claim to wealth, a benefit, deliberate violations, mistakes [jinayatul 'amad wal khata] and penal punishments?

A: It is allowed in all that except penal punishment.

Question 1254) A man claims that a woman is his wife. She denies it and pays him as a compromise to leave her. Is this valid?

A: The compromise is valid and is deemed a Khul' [payment from the woman for divorce].

Question 1255) A woman claims a man is her husband. He denies it and pays her as a compromise to leave him alone. Is this valid?

A: The compromise is not valid.

Question 1256) A man claims another as his slave. The defendant pays him as a compromise. What is the ruling?

A: It is permissible. It will be deemed from the claimant's side as freeing a slave in exchange for money.

¹⁶² Because it is possible that his claim is in the part of the house which the new claimant does not dispute. The matter is different if he is entitled to the entire house. [al-Jawharah]

Question 1257) The man appointed an agent to compromise on his behalf. Is it the agent's duty to present the amount compromised on?

A: No, unless it was stipulated. The money is the liability of the principle.

Question 1258) If a man compromised on behalf of another without his authorisation, who is liable for payment?

A: There are four scenarios:

1. He compromised with money and took liability for the money.
2. He said, "I compromise with you for 2000/this slave." In these two scenarios the compromise is concluded and the amount becomes obligatory upon him.
3. He says to him, "I have compromised with you upon 1000," and gives it to him. The compromise is complete in this case as well. If he paid to settle the claim against a third party he cannot claim the money back from the third party.
4. He says to him, "I compromise with you upon 1000 without liability of it," and does not attribute it to himself, nor that the rendering will be done by him. This compromise is suspended until the defendant confirms it, in which case the 1000 becomes obligatory upon him. If he does not validate it, the compromise is void.

Question 1259) Two partners have a debt against someone. One of the partners compromises on his share with a cloth. What can the other partner do?

A: He can claim half the debt from the debtor; or he can take half the cloth and make his partner liable for a quarter of the debt. Similarly if one partner had received his half of the debt, then the other partner can share with him what he received, and both will claim the remainder from the debtor.

Question 1260) What if one of them bought something with what he received from the debt?

A: The other partner can make him liable for a quarter of the debt.

Question 1261) Two partners sold something on terms of Salam. The one compromises with the other on his share of the item by paying him from the money received. Is this allowed?

A: It is not allowed according to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Yusuf رحمته الله it is allowed.

Question 1262) A man died leaving behind several heirs. The heirs made a settlement with one of them. They paid him and excluded him from the inheritance. Is this allowed?

A: The question requires a detailed response:

1. If the inheritance is land or goods then the settlement is permissible, whether they gave him a lot or a little.
2. If the inheritance was silver and they gave him gold; or was gold and they gave him silver, then it is permissible as well.
3. If it is gold, silver and goods, then it is necessary that what they give him must be more than his share of that type of wealth, until his share matches it. The excess will be for his right to the remainder of the inheritance.
4. If the inheritance is debts against people and one of them paid him money so that he will give up his share of the debt will be amongst them, then the compromise is void.
5. If they however stipulated that that they would absolve the debtors of their debts and would not claim the share of the compromiser, then it is permissible.

Question 1263) Is man is owed 1000 immediately. He compromises on 1000 debt, what is the ruling?

A: This is permissible. It is as if he has delayed the right.

Question 1264) He is entitled to 1000 Dirham immediately. The debtor offers to Dinars after a month instead.

A: This is not permissible. It is a form of Sarf (currency dealing) and delay is not allowed in it.

Question 1265) He is owed 1000 on credit. The debtor offers to compromise with 500 immediately. Is this allowed?

A: It is not allowed.¹⁶³

Question 1266) A man is owed 1000 black Dirham. Can he settle for 500 white Dirham?

A: It is not permissible.¹⁶⁴

NOTE: A compromise on a debt owing will not be interpreted as an exchange [for that would be Riba]. It is interpreted as receiving part of a right and forgiving the rest. For example, he is entitled to 1000 genuine Dirham from a man, and settles for 500 alloyed Dirham. That will be as if he forgave part of his right.

Kitabul Hibah [Gifts]

Question 1267) What is Hibah?

A: Assumption of ownership without compensation.

Question 1268) What are its preconditions?

A: Offer and acceptance.

¹⁶³ Cash is better than credit. He is not entitled to the immediate payment. The compromise amount will be in exchange for time which is not permissible.

¹⁶⁴ Because he is not entitled to the white at the time of the contract which is better quality than the black. Thus the exchange of 1000 for 500 with an increase in quality is Riba. However, if he was owed 1000 white and accepted 500 black instead then it is permissible because it is a forfeiture of part of a right in quality and quantity. It is not allowed to compromise on the quantity in exchange for quality because that is an exchange of like for like. Here no regard is paid to the difference in quality other than it has to be taken possession of in the gathering. [al-Hidayah]

Question 1269) What else is required after offer and acceptance to complete the deal?

A: Taking possession is necessary. If the *Mawhub lahu* [recipient] takes it in the gathering of the offering, even without the explicit permission of the *Wahib* [presenter] it is valid. It is not valid if he took it after they separated unless the presenter gave the recipient permission.

Question 1270) What are the words the presenter should utter to enact the gift?

A: I gift unto you/ I present you with/ I give you/ I am feeding you this food/ I have made this robe yours. "This is for you for the rest of your life"¹⁶⁵. "I have made you the rider of this mount" if he intends thereby gifting it to him.

Question 1271) What is the ruling of giving a section as a gift of something which can be physically divided?

A: It is not permissible unless the gifted part is separated.

Question 1272) Can a share in a jointly owned property be gifted?

A: It is permissible in things which cannot be divided e.g. a slave, bath, water-wheel etc.

Question 1273) What is the ruling if he gifted a section of a jointly owned property which can be divided?

A: The gift is Fasid. If the goods are divided and a section is given to the recipient then it will be permissible.

Question 1274) A man gave the "flour" in the wheat as a gift; or "The oil in this sesame seeds is a gift to you." What is the ruling?

¹⁶⁵ When the recipient dies the gift is returned to the presenter/his heirs.

A: The gift is Fasid.

Question 1275) If he grinds the wheat and then gives it?

A: It is still not correct, unless he concludes a new agreement.

Question 1276) You have mentioned that that taking possession is a condition of a valid gift. What happens if the intended recipient already has the gift with him?

A: His prior taking it will suffice and ownership passes with the act of gifting it. This includes a father gifting to his non-adult son. The son immediately becomes the owner because the father's having it in his possession is on behalf of the son.

Question 1277) A stranger gives a gift to a child. How will the deal be completed?

A: The father, or the guardian if the father died, will collect it.

Question 1278) The mother caring for an orphan collected the gift. Is this permissible?

A: Yes, even if the orphan was in the care of a stranger, the stranger may collect it for him.

Question 1279) Is the deal valid if the child collects it himself?

A: It is valid if the child has intelligence. Otherwise whoever is raising him must collect it as discussed above.

Question 1280) What is the ruling of one man gifting a house to two people; or two people gifting to one man?

A: According to Imaam Abu Hanifa رحمته الله the first gift is valid and the second invalid. According to the other two Imams both are valid.

Question 1281) Is a gift valid if compensation is stipulated?

A: Yes. In that case taking possession on both sides are required. When both have done so then the deal is correct. However, it will be regarded as a sale. Hence it may be returned due to defect or right of sight and the right of pre-emption will be enacted where applicable.

Question 1282) A man was given a slave-girl except for her foetus. What is the status of this exception?

A: The gift is valid and the exception is void.

Question 1283) What is the ruling on taking a gift back?

A: If someone gave a stranger a gift, he may claim it back, unless he gave something in exchange; or the recipient increased in the gift an increase which is joined; or one of the two parties died; or the recipient no longer owns the gift. Although taking a gift back is allowed under these conditions it is Makruh Tahrimi to the worst degree. Rasulullaah ﷺ said, "The one who takes a gift back is like a dog who laps its own vomit. We have no worse comparison." [al-Bukhari]

Question 1284) Why have you stipulated a stranger? Can a gift not be taken from a relative?

A: A gift given to a blood relative who cannot be married or to a spouse cannot be claimed back.

Question 1285) You mentioned that if the recipient gave something in exchange the gift cannot be taken back. Explain this exchange.

A: It will be in the case the recipient says, "Take this in exchange for your gift/as a substitute/in place of." Once the presenter takes the recipient's gift he can no longer reclaim his gift. The same applies if a third party offers him a gift because of the gift he gave and he accepts, he may then no longer reclaim his gift.

Question 1286) The recipient gave something in exchange. It transpires that a third party is entitled to half the original gift. What can he claim?

A: The claimant can claim half the item given in exchange.

Question 1287) If the claimant is entitled to half the item given in exchange. Can the presenter reclaim his gift?

A: No, unless he first returns the item he received and then he can claim the entire gift back.

Question 1288) What are the conditions to validly take a gift back?

A: When reclaiming a gift is permissible, then it must be through mutual consent or a court ruling.¹⁶⁶

Question 1289) The gift perishes and a third party emerges as the legitimate owner and holds the recipient liable. Can the recipient claim against the presenter?

A: No.

Question 1290) Must a poor man take physical possession of charity to establish his ownership?

A: Charity is the same like a gift. Ownership is not established until possession is taken. Charity of a jointly owned item which can be divided is not allowed.

Question 1291) Can a single item be given to two poor people in charity?

A: Yes.

¹⁶⁶ Because the recipient's ownership has been established in the goods it cannot be removed except with consent or a court decision.

Question 1292) Can charity be reclaimed?

A: It cannot be taken back once possession has been taken.

Question 1293) Is 'Umra¹⁶⁷ and Ruqba¹⁶⁸ permissible according to our Three Imams?

A: 'Umra is permissible. It belongs to the recipient and to his heirs after him. According to Imaam Abu Hanifa رحمته الله and Imaam Muhammed رحمته الله Ruqba is invalid. According to Imaam Abu Yusuf رحمته الله it is valid.¹⁶⁹

Kitabul Ghasb [Usurpation]

Question 1294) What is Ghasb?

A: It is the removal of the legitimate hand through the establishment of a nullifying hand over respectable wealth with monetary value which can be transferred without the permission of the owner.

Question 1295) A man usurped something and claims that it has perished. What is the ruling against him?

A: In principle he is supposed to return the usurped item itself. If he claims that it is perished the judge will detain him until satisfied that if it still existed he would have revealed it. The judge will then rule that he should substitute it.

¹⁶⁷ To give a house to someone for the duration of his life. The ownership is valid and the condition void. We have explained that Fasid conditions do not nullify gifts. [al-Hidayah]

¹⁶⁸ My house is for you as Ruqba [awaiting death].

¹⁶⁹ According to him, "For you," establishes ownership and "as Ruqba" is Fasid as in 'Umra. The proof of the other two is that Rasulullaah ﷺ permitted 'Umra and not Ruqba. They also say the Ruqba means, "If I die before you then the house is yours." These words indicate a condition of ownership based on danger which is void. The only form of validity is according to them is that of 'ariyah [use without ownership].

Question 1296) What will the substitute be?

A: If he usurped that which has a replacement of the same kind e.g. wheat, and it perishes in his hands then he is liable to replace it with a like good. If it something which does not have an exact substitute like counted goods which differ, then he should compensate with the price.

Question 1297) Does it make a difference if the item perished on its own and if the usurper destroyed it?

A: There is no difference. The usurper is liable if it perished in his hands, through his action or otherwise.

Question 1298) What is the effect of damage to the usurped goods?

A: The usurper is liable to pay for it.

Question 1299) A usurped item changed because of the usurper in a manner that it is no longer called the same item and its major benefits have been lost e.g. a man usurps a sheep, slaughtered it and roasts/cooks it; or wheat and he ground it; or iron and he made a sword out of it; or brass which he made into a vessel. What is the ruling?

A: The victim is no longer the owner of the substance which the usurper now owns. The usurper may not use it until he substitutes it for the victim.

Question 1300) A man usurped a white cloth and dyed it red; or cereal which he mixed with butter, what is the ruling?

A: The owner can give the cloth to the usurper and make him liable for the price of the white cloth/give him the cereal and demand that he substitute it; or he can take his goods back and owe him the price of the dying/butter.

Question 1301) If a man usurps land and builds on it?

A: The owner no longer has it and the usurper must pay him the price.

Question 1302) The usurped item disappeared and the owner claimed the price. The two parties differ in the evaluation. What will be paid?

A: The usurper's word will be taken under oath, unless the owner can produce evidence that it is more. Once the usurper undertakes liability of that price he becomes the owner.

Question 1303) The usurper became liable to pay for the missing usurped item whether through the word of the owner; the proof of the owner; the refusal of the usurper to take an oath; or the oath of the usurper. The item is then found and its price is more than the amount he took liability for. Has the owner any right over the difference?

A: If the usurper took liability through his own word under oath then the owner can let go of further liability or he can take his item and return the compensation paid.

If he took liability because of the word of the owner or the proof the owner presented, or his refusal to take an oath then the owner has no choice – the usurper owns it.

Question 1304) He usurped gold/silver and made it into Dirham/Dinar or vessels. Has the ownership been transferred?

A: According to Imaam Abu Hanifa رحمته الله the owner retains ownership because the substance of the item remains from all aspects.¹⁷⁰

¹⁷⁰ According to the other two the usurper will owe the amount of gold/silver he usurped and will own the usurped item because he had added craftsmanship to it. If he however beat it into sheets then ownership has not been transferred according to all three Imams.

Question 1305) A man slaughtered a sheep without the owner's permission. What can the owner do?

A: He can give him the carcass and demand the price of the sheep; or he can claim the value of the damage.

Question 1306) A man burnt the cloth of someone else. What is the ruling?

A: If the burn is slight, the burner will be liable for the damage. If the damage is substantial whereby the general benefit is lost, the owner may claim the price from him.

Question 1307) When you defined Ghasb you stipulated that it must be of "respectable wealth with monetary value which can be transferred..." What is the relevance of these conditions?

A: The relevance can be seen from the following examples:

1. A Muslim destroyed wine/pigs belonging to another Muslim. He will bear no liability because these are not respectable items and have no monetary value by a Muslim. If however a Muslim destroys a Zimmi's wine/pig he is liable because they have monetary value to the Zimmis.
2. Usurpation is not found in land according to Imaam Abu Hanifa رحمته الله and Imaam Abu Yusuf رحمته الله because land cannot be transferred and moved. Thus if the land is destroyed¹⁷¹ the usurper is not liable according to them, but is according to Imaam Muhammed رحمته الله.

Question 1308) Usurpation does not occur on land, but if someone took over land and whether by his actions or residence the land is damaged is he liable?

A: Yes, he is liable according to all three Imams.

¹⁷¹ For example, a flood sweeps away the soil and trees.

Question 1309) A man usurped a land and built a building or planted trees. What is the ruling?

A: The usurper must uproot the trees/demolish the building and return the empty land to the owner. If that will however damage the land, then the owner may pay him for the building/tree free of the earth and assume possession over them.

Question 1310) The usurped item increased in the hands of the usurper. What is the ruling?

A: The increase such as a baby of a usurped female or the fruits of a garden is amanah [trust] in the hands of the usurper. If it perishes he is not liable unless he was neglectful or he refused to give it to the owner when the owner claimed it.

Question 1311) A man usurped a slave-girl. He or someone else had intercourse with her whilst she was in his hands. She gave birth as a result and her value dropped. Who is liable for the loss?

A: The usurper is liable. If the baby is worth the lost value then the baby is in settlement of the loss and the usurper has no further liability. If the baby's value does not fully compensate, its value will be deducted from the loss and the usurper liable for the remainder.

Question 1312) A man usurped a mount and rode it/a house and inhabited it/a slave and used his services. He did this for a month for example. Does he owe anything for the benefit he got?

A: No, unless he usage caused damage.¹⁷²

Kitabul Wadi'ah

Question 1313) What is *Wadi'ah* linguistically and in Shari'ah?

¹⁷² He is not liable in a court of law, but morally he is a sinner.

A: It is derived from *Wad'*, meaning to leave behind. In Shari'ah it means to leave an item behind by a person who is capable of protecting goods; whilst the item remains under the ownership of the owner.¹⁷³

Question 1314) What is the ruling of *Wadi'ah* when in the possession of the *Muda'* [one who is entrusted with the *Wadi'ah*]?

A: It is an Amanah [trust] in his hands. He is not liable if it perishes unless he was negligent.

Question 1315) Must the *Muda'* protect it himself?

A: He must protect it himself or with someone from his household. If he gives it to someone else to protect or places it as *Wadi'ah* by a third party then he is liable. Exceptions are if his house burnt and he gave it to his neighbour for safekeeping; or he was on a ship and feared that it would sink so he sent it to another ship. In these cases he is not liable because he acted in the interests of the *Mudi'* [owner of the *Wadi'ah*].¹⁷⁴

Question 1316) The owner instructed the *Muda'* not to give the *Wadi'ah* to his wife. He gave it to her. Or he instructed him, "Guard it in this room," he then guarded it in another room of the same house. The *Wadi'ah* perished. Is he liable?

A: Not in these cases. If however he left it at another house he is liable.

Question 1317) The owner comes to collect the *Wadi'ah*. For this purpose he hires someone to help him. Who pays this fee?

¹⁷³ The difference between *Wadi'ah* and Amanah is that the aim of *Wadi'ah* is protection of the item, whilst Amanah is something which has unintentionally fallen into someone's control, like if the wind blew a cloth into someone's lap. [al-Jawharah]

¹⁷⁴ However he will not be believed in these cases unless he takes an oath [al-Hidayah]

A: The owner.

Question 1318) What is the ruling of liability if the *Wadi'ah* became mixed with the wealth of the *Muda'* or the *Muda'* mixed it himself?

A: If the *Wadi'ah* became mixed with his wealth without his action, then he becomes a partner with the owner. If he mixed it until it becomes indistinguishable from his wealth then he is liable for it.

Question 1319) What is the ruling of liability if the *Muda'* spent from the *Wadi'ah*?

A: If he spent it all, he is liable for the full amount. If he spent some of it and the rest perished, then he is only liable for the amount spent.

Question 1320) If he spent part of it and then repaid that amount so that it became mixed and undistinguishable, is he liable for the entire or part amount?

A: He is liable for the entire amount.

Question 1321) The owner came to collect the *Wadi'ah*. The *Muda'* refused to give despite being able to. It then perishes in his hands without any negligence. Is he liable?

A: He is liable. His not being negligent will not be a defence as his refusal to surrender it when able to, is also transgression.

Question 1322) The *Muda'* transgressed with the *Wadi'ah*. He rode the animal/wore the clothing/used the slave/or gave it to a third party as *Wadi'ah*. The transgression terminated and it returned to his hands. Is he still liable?

A: No, the liability then ends.¹⁷⁵

¹⁷⁵ Meaning that the liability for that transgression ends. If he transgresses again the liability is reimposed.

Question 1323) The owner comes to collect the *Wadi'ah* and the *Muda'* denies that he left a *Wadi'ah* by him. What is his liability?

A: He is permanently liable. Even if he later confesses to the *Wadi'ah* his liability does not terminate, even if it perishes without his doing. The denial is a transgression in itself.

Question 1324) Can the *Muda'* travel with the *Wadi'ah*?

A: Yes, unless the owner had prohibited it, and as long as there is no fear about it when taking it out.¹⁷⁶

Question 1325) If it needs to be transported and is inconvenient, can he still travel with it?

A: He may as per the conditions mentioned.

Question 1326) Two men leave a *Wadi'ah* by one man. One of them comes and asks for his share. Must the *Muda'* give it to him?

A: According to Imaam Abu Hanifa رحمته الله he may not give him anything until the other man comes. According to the other two Imams he may give him his share.

Question 1327) If a man gives a *Wadi'ah* to two men, can one of them give the entire trust to the other?

A: If it is something which can be divided then it will not be allowed. It must be divided and each will look after a half. If it cannot be divided then one of them will look after the entire itme with the permission of the other.

Question 1328) The *Muda'* returned the *Wadi'ah* to the owner's house, not to the owner personally. Is he liable if it perishes?

¹⁷⁶ These are the conditions of Imaam Abu Hanifa رحمته الله. According to the other two Imams he may not travel with it if it needs to be ported or otherwise incurs inconvenience.

A: Yes.¹⁷⁷

Question 1329) Who bears the expenses of returning the *Wadi'ah*?

A: The one who made the *Wadi'ah* [e.g. the owner].

Kitabul 'Ariyah [item lent for use]

Question 1330) What is 'Ariyah?

A: Assumption of ownership of a benefit without compensation.

Question 1331) What is its status in Shari'ah?

A: It is permissible.

Question 1332) With what words is it enacted?

A: When the *Mu'ir* [owner who allows the use of his property] says, "I have given you this as '*Ariyah*/'I give you this slave to use/my house is for you to reside/my house is for you to reside for the rest of your life." If he says, "I feed you from this earth/'I favour you with this cloth/'I let you ride on this animal," then it is a valid '*Ariyah* unless he intended it as a gift.

Question 1333) What is the status of the '*Ariyah* in the hands of the *Musta'ir* [borrower]?

A: It is a trust; if it perishes without transgression then he is not liable.

Question 1334) Can the borrower hire the '*Ariyah* to a third party?

¹⁷⁷ Because the owner was not satisfied with anyone else protecting it. If he was he would not have left it as *Wadi'ah* by the *Muda'*.

A: No, that is a transgression. If he does so and it perishes then he is liable.

Question 1335) Can the lender borrow the '*Ariyah* to a third party?

A: Yes, as long as he does not give it to such person through which the use will substantially change.

Question 1336) Can Dirhams, Dinars, weighed goods and measured goods be lent as '*Ariyah*?

A: Yes, they are loans even if the parties call it '*Ariyah*.

Question 1337) A man lent a horse and returned it to the master's stable. It then perished. What is the ruling?

A: He is not liable because he handed it in a way people recognise. The same applies if he returned a borrowed slave to the master's house. Although he did not return him to the master personally he is not liable.

Question 1338) Who is liable for the expense of returning the '*Ariyah*?

A: The borrower bears the expense just as a usurper is liable for the expense of returning the usurped goods. The cost of returning hired goods is upon the hirer.

Question 1339) Can the lender demand the '*Ariyah* back?

A: Yes, he can demand it whenever he wishes.

Question 1340) If someone borrowed land to build thereon or plant a tree, he has done so when the owner demands it back; what happens to the tree/building?

A: If the '*Ariyah* was given for a specific time and the owner demands it back before the allotted time expires then the owner is

liable to compensate the borrower for his losses in uprooting the tree/removing the building.

If there was no specified time then he can force the borrower to remove the building/tree. In this case he has no liability.¹⁷⁸

Kitabul Muzara'ah [Farming partnership]

Question 1341) What is *Muzara'ah* linguistically and in Shari'ah?

A: It is *zar'* (sowing) on the syntax scale of *mufa'alah*. In Shari'ah it is a deal between a landowner and a labourer whereby the labourer will farm the land and will be entitled to a stipulated share such as a third or a quarter.

Question 1342) What is the status of *Muzara'ah* according to our three Imams?

A: According to Imaam Abu Hanifa رحمته الله is void. According to the other two there are four types:

1. The land and seeds belong to one party and the labour to another.
2. The land belongs to one party and the labour, cattle and seeds belong to another.
3. The land, seeds and cattle belong to one party and the labour to another.

These three types are permissible.

4. The land and cattle belong to one party and the seeds and labour belong to another. This type is not allowed.¹⁷⁹

¹⁷⁸ That is according to al-Quduri. According to al-Hakim ash-Shahid the owner is liable to pay the borrower the cost of the tree/building and he will own it, unless the borrower wishes to remove them. He will not be liable for the price because it is his property. [al-Hidayah]

In *al-Kafiyah*: If the price of the building at the time of expiry of the time would have been 10 Dinar and presently at the time of removal it is 2, then he is liable for 8.

¹⁷⁹ Because the cattle is being hired for part of the [non-existing] crops which is not permissible.

Question 1343) What conditions are required to validate the *Muzara'ah* in the three permissible types?

A: There are two conditions:

1. The time must be stipulated.
2. That the crops must be jointly owned between them.

Question 1344) Two parties entered into a *Muzara'ah* agreement. They stipulated a set amount of Qafiz of the crop for one of them. What is the status of this *Muzara'ah*?

A: It is void.

Question 1345) And if they stipulated that whatever grows by the banks of the rivulet or stream belongs to a specified one of them?

A: This is also void.

Question 1346) When the *Muzara'ah* is valid, how are the crops shared?

A: The crops will be divided according to the ratio they had stipulated. If the earth did not grow any crops then the labourer will not get anything.

Question 1347) The *Muzara'ah* was *Fasid*, but the crops grew and the labourer worked on them. How will the crops be shared?

A: There will be no sharing. Instead, the crops will belong to the owner of the seeds. If the seeds belonged to the landowner then the labourer will receive a market fee which will not exceed the amount they had agreed upon. According to Imaam Muhammed رحمته الله he will receive a market fee whatever amount it may reach. If the seeds were from the labourer then the landowner will receive a market fee instead.

Question 1348) The owner of the seeds refused his labour after the agreement had been reached. Can he be forced upon it?

A: No.

Question 1349) If the party which does not have the seeds refuses, what will be decided?

A: The judge will force him to fulfil his labour.

Question 1350) What will they do if the time period has expired but the crops are not yet ripe?

A: They will leave the crops until they ripen. The farmer [labourer] pays a market rent in proportion to his share of the produce of the earth until the crops are harvested. They will share the expenses of the farming in proportion to their rights.

Question 1351) Who bears the expenses of harvesting, transport, grinding and sifting?

A: It will be shared amongst them according to their shares. If they stipulate it upon the worker the *Muzara'ah* is void.

Question 1352) If one of the parties dies does the contract remain?

A: The contract is nullified.¹⁸⁰

¹⁸⁰ Al-Quduri has left it in those general terms. According to al-Jawharah that is if the he dies before crops grow. If the landowner dies after the crops grow then the land will be left for the labourer to tend and upon harvest it will be divided as agreed. If it was the labourer who died his heirs will work on his behalf. The landowner may not prevent him as he will not be harmed, but if the crops are uprooted the heirs will suffer. They will not receive a fee for their work. If they want the crops uprooted they cannot be forced to work on the crops instead. The landowner will be told, "Uproot it and share it between you/ Give them the price of their share and the crops are all for you/ spend on their share and you can be reimbursed from their share."

Kitabul Musaqah

Question 1353) What is *Musaqah*?

A: It is *Saqy* (irrigation) on the syntax scale of *mufa'alah*. In Shari'ah it is to hand fruit trees to the care of another party to care for them in exchange for an agreed share of the fruit such as a third or quarter.

Question 1354) What is the status of *Musaqah*?

A: According to Imaam Abu Hanifa رحمته الله it is void. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is valid on condition that a time a stipulated and as well the each party's share of the jointly owned fruit.

Question 1355) In which trees can *Musaqah* be made?

A: It is valid in palms, vines and other trees and fruit bearing plants and in tubers like egg-plant.

Question 1356) Is there an additional condition?

A: If the tree is handed over for *Musaqah* and the fruit increases through his labour then the *Musaqah* is valid. If his labour does not increase the fruit then it is not valid.

Question 1357) If the agreement is *Fasid* what does the labourer receive?

A: Market related wage.

Question 1358) Is the contract ever nullified?

A: Yes, through the death of either party, just as in *Muzara'ah*.

Question 1359) Is the contract cancelled in any circumstances?

A: Yes, just as valid reasons cancel contract of hire, they also cancel *Musaqah*.

Kitab Ihyaul Amwat ***[Cultivation of virgin land]***

Question 1360) What is *Mawat* [virgin land]? How is its *Ihya* [revival/cultivation] made?

A: *Mawat* is such land from which no benefit is derived, because the land no longer receives water; or it is submerged in water; or for any other similar reason which prevents cultivation. It is permissible to cultivate ancient land which has no master; or it had an owner during the Islaamic period but its specific owner cannot be identified. The land must be so far from the city that if one stood by the building right at the end of the city and shouted, one would not be heard in that land.

Question 1361) Is the permission of the Imam needed for that?

A: Yes, the permission of the ruler is needed. He who cultivates a land with the ruler's permission owns it. According to Imaam Abu Hanifa رحمته الله if one cultivates it without permission then he does not own it. The other two Imams say that he will own it even if cultivates it without permission.

Question 1362) What is the ruling of a Zimmi cultivating the virgin land?

A: His cultivation is the same as a Muslim's and he owns it.

Question 1363) What is the meaning of cultivating the virgin land?

A: It entails tilling the land, irrigating it or digging canals to it and bring water to it, or to dig a well in it, or to build a dam to store the water, or to sow seeds in it, or to plant in it or to build on it.

Question 1364) Why have you stipulated the condition that the land be far from the city?

A: Because people might be in need of the land near the city. They gather their crops there and graze their herds there. Hence cultivation of such land is not allowed.

Question 1365) You have mentioned that if someone digs a well it counts as reviving the land. If someone digs the land then what does he acquire from the land?

A: He acquires a *Harim* around it which he will own.¹⁸¹

Question 1366) What is the extent of this *Harim*?

A: If he uses the well to water his animals then it is 40 arm-spans in all directions. If he brings the animals to draw the water to water his crops then it is 60 arm-spans.

Question 1367) If the well has a flowing spring in it, what is the *Harim*?

A: 500 arm-spans.

Question 1368) What is the effect of granting a *Harim* to the one who dug a well?

A: No-one else may dig a well in that area.

Question 1369) If the Tigris or Eupharates [i.e. a river] changes course, can the revealed land be claimed for cultivation?

A: If it is possible that the river will return there, then the land may not be claimed. If it will not return then it may be claimed if not

¹⁸¹ Having the rights and what is associated around it. It is called *Harim* because it is *Haram* to the non-owner. [*Raddul Mukhtar*]

At-Tashil ad-Daruri (Part 1)

within the Harim of habitation. Whoever cultivates it under these conditions and with the permission of the ruler becomes the owner.

Question 1370) A man owns a canal which flows through the land of another man. Does he have Harim?

A: According to Imaam Abu Hanifa رحمته الله he does not, unless he has proof of it. According to the other two Imams he can dam the canal and close it up with earth.

Question 1371) A man has established a claim on virgin land but does not inhabit it, and leaves it like that. Can the judge rule against him?

A: He will be given respite of three years, after which the land will be confiscated and given to someone else.

Kitabul Mazun

[Incapacitated person given permission]

Question 1372) What is a *Mazun*?

A: It is the opposite of *Mahjur* [incapacitated person]. We explained in *Katabul Hijr* that there are three causes for incapacitation: childhood, slavery and insanity. We shall explain here some *Masail* which related to a slave whose owner has given him permission to buy and sell. At the end of the chapter we shall discuss *Masail* related to a child who has been given permission.

Question 1373) What is the status of the slave's transactions when the owner has given him permission?

A: If the owner has given general permission then the slave may engage in any trade. He may buy, sell, give collateral and take collateral. If he has been given permission for one kind of trade he may do all trades.

At-Tashil ad-Daruri (Part 1)

Question 1374) What is the ruling when the owner gives permission for a specifically defined transaction, e.g. to buy a robe for wearing/food for the family?

A: This is not permission to trade. He is limited to do what he has been ordered to. The laws of *Mazun* will not apply to him.

Question 1375) What is the status of the *Mazun* confesses to debts, usurpation and *Wadi'ah*?

A: His confession is valid.

Question 1376) If he has been given general permission can he marry?

A: He may neither marry himself, nor may he let a slave - male or female - he bought marry.

Question 1377) Can he make a *Mukatab* contract with a slave he bought or free him for money?

A: No.

Question 1378) Can he give gifts and charity?

A: He may not give gifts, with or without receiving compensation from the recipient. He may however give a little food or invite someone to join him in his food.

Question 1379) A *Mazun* trades and incurs debts. Who is liable for them?

A: The debts will be on his neck [slavery] and he will be sold for the creditors, unless the owner ransoms him. Once he is sold the creditors will share the price in proportion to their shares. If there remains an outstanding amount then it will be claimed from him when he is free.

Question 1380) A *Mazun* slave incurs debts covering the value of his possessions and himself. Does his owner still possess what he owns?

A: No he does not. Thus if the owner sets free a slave of that *Mazun* slave, the slave will not be freed. This is according to Abu Hanifah رحمته الله. According to the other two Imams, the owner owns what is in the possession of the *Mazun* slave even if the debts encompass it.

Question 1381) What is the status of the owner setting his indebted *Mazun* slave free?

A: The slave is free and the owner is liable to pay the creditors the value of the slave. In shortfall in their claim must be paid by the ex-slave.

Question 1382) What is the ruling of the *Mazun* selling something to his owner?

A: The *Mazun* slave may sell to his owner at market rates or more; but not less, if the slave is indebted. If he is not, then the sale has no basis because the slave and his possessions belong to the owner in any case.

Question 1383) What is the ruling if the owner sells something to his *Mazun* slave?

A: It is permissible at market rates or less, not more. This condition is also only when the slave is indebted. If the owner hands the item over before payment, the price is void.¹⁸²

¹⁸² Because if the item is handed over before taking the price then it becomes a debt against the slave, and debts to the owner are not established against a slave. Once the price is void it is as if the owner sold without a price. The sale is thus not valid. What is meant by the price being void is that the owner cannot demand it from the slave and will instead take the goods back from him. [al-Jawharah].

Question 1384) If the owner retains the goods until the slave pays?

A: That is permissible.

Question 1385) Can the owner declare the slave to be incapacitated?

A: Yes, the slave will become incapacitated, on condition that the owner announces his incapacitation in the market.¹⁸³

Question 1386) Is there another way the *Mazun* slave can be incapacitated?

A: Yes, if the owner dies, becomes insane or enters the lands of the Kuffar as an apostate then the slave becomes incapacitated.¹⁸⁴ When a *Mazun* slave runs away he becomes incapacitated. When a *Mazun* slave-girl gives birth to her owner's child she becomes incapacitated.

Question 1387) What is the status of the confession of a *Mazun* slave to debts, usurpations and amanat when he has been incapacitated?

A: The confession is valid for whatever he holds according to Abu Hanifah رحمته الله. According to the other two Imams his confession is invalid.

Question 1388) What is the ruling of a guardian giving a child permission to trade?

¹⁸³ Because they believed that they could transact with him. That belief will not be rectified without knowledge. It is a condition that most of the people of the market are informed. [al-Jawharah]

¹⁸⁴ If the slave becomes completely insane he becomes incapacitated, as when he enters the lands of the Kuffar as an apostate. According to Abu Hanifah رحمته الله he becomes incapacitated as soon as he abandons Islam. According to the other two Imams when he enters the lands of the Kuffar.

A: The permission is valid. Once he has been given permission then his buying and selling is the same as a *Mazun* slave's. His transactions will take effect if he understands buying and selling.

Kitabul Waqf [Endowment]

Question 1389) What is Waqf?

A: Literally it means to keep back. In Shari'ah it is to keep an item in the status of ownership of the *Waqif* [one making the endowment] whilst giving the benefit in charity.¹²⁵

Question 1390) Why has Waqf been given recognition in Shari'ah?

A: In order that people in need¹²⁶ may utilise its benefits whilst the substance remains intact. Also, so that the substance can remain as *Sadaqah Jariyah* [perpetual charity] for the *Waqif*. Rasulullah ﷺ said, "When a human dies his deeds end except for three – perpetual charity, or knowledge through which people benefit, or pious offspring who pray for him." [Muslim]

Question 1391) When is the ownership of the *Waqif* over the endowment terminated?

A: According to Abu Hanifah رحمه الله it does not terminate unless the judge rules thus; or he attaches it to his death and says, "When I die then I make my house Waqf for ..." According to Imaam Abu Yusuf رحمه الله it terminates with his mere utterance. According to Imaam

¹²⁵ Which is according to Abu Hanifah رحمه الله. According to the other two Imams, it is keeping an item in the status of the ownership of Allah. "Ownership of the *Waqif*" according to Abu Hanifah رحمه الله means before a court decision, because after a judge rules then the ownership is removed from the *Waqif* according to him as well.

¹²⁶ This is a general phrase encompassing wealthy people as well who need to use Waqf property such as praying in Masjid and staying at facilities for travellers.

Muhammed ﷺ it does not terminate until he appoints a trustee for the *Waqf* and hands it over to him, because it is the right of Allah.
¹²⁷

Question 1392) Does the *Waqf* become the property of the *Mawquf 'alayhi* [one for whom the endowment has been made] after it leaves the property of the *Waqif*?

A: Once the *Waqf* is validated as per the differences we have mentioned, it leaves the property of the *Waqif* but does not become part of the property of the *Mawquf 'alayhi*.

Question 1393) Is there any condition for the correctness of the *Waqf* according to our three Imams?

A: According to Imaam Abu Hanifah رحمه الله and Imaam Muhammed رحمه الله the *Waqf* is not complete until it is made for a party which does not ever end.¹²⁸ According to Imaam Abu Yusuf رحمه الله if he mentioned a beneficiary which comes to an end then it is correct. It will then pass onto the poor even if he did not mention it.

Question 1394) What is the ruling of jointly owned *Waqf*?

A: According to Imaam Abu Yusuf رحمه الله it is permissible. According to Imaam Muhammed رحمه الله it is not permissible.¹²⁹

¹²⁷ According to Abu Hanifah رحمه الله it is not finalised until the judge rules that it moves out of his ownership by way of a bequest. According to the other two it is finalised without that. The general 'Ulama agree with that and that is correct. According to Abu Yusuf رحمه الله it is finalised by his mere utterance because it is the same as setting a slave free. The Fatwa is upon this. [Raddul Muhtar]

¹²⁸ Whereby he says, "I make this a charity *Waqf* forever for the sake of Allah for the descendants of so-and-so as long as the line continues. If the line ends then it is for the poor," because there will always be poor.

¹²⁹ This difference is on that which can be divided. As for that which cannot be divided then joint *Waqf* is allowed according to Muhammed رحمه الله as well. There is no joint *Waqf* in Masajid and graveyards according to Abu Yusuf رحمه الله as well.

Question 1395) What is the ruling of Waqf of land?

A: It is permissible.

Question 1396) What is the ruling of Waqf of items which can be moved and transported?

A: According to Imaam Abu Hanifah رحمته الله عليه it is not permissible. According to Imaam Abu Yusuf رحمته الله عليه if a land is given as Waqf with its cattle and labourers who are slaves, then it is permissible. According to Imaam Muhammed رحمته الله عليه transport and weapons can be made Waqf in the way of Allah.

Question 1397) What is the ruling of selling, making an owner and dividing a Waqf?

A: It may not be sold or an owner made over it. Joint Waqf can be divided if the partber so requests. This is according to Imaam Abu Yusuf رحمته الله عليه who recognises joint Waqf.

Question 1398) When does the ownership of the Waqif terminate over the land if he built a Masjid on it?

A: According to Imaam Abu Hanifah رحمته الله عليه and Imaam Muhammed رحمته الله عليه it does not terminate until he detaches it from his property by way of the path and allows people to pray in it. Thus when even one person has prayed in it, his ownership is terminated. According to Imaam Abu Yusuf رحمته الله عليه it terminates with his saying, "I have made this a Masjid."

Question 1399) What is the ruling of a water-source [e.g. well], hostel for travellers, hospice or graveyard?

A: According to Imaam Abu Hanifah رحمته الله عليه these remain his property until the court rules otherwise. According to Imaam Abu Yusuf رحمته الله عليه his ownership terminates when he says he made these Waqf. According to Imaam Muhammed رحمته الله عليه when he gives people water from his water-source; or when the people start living in the

hostel and hospice; or they bury the dead in the graveyard; then his ownership is terminated.

Question 1400) What must the trustee do with the income of the Waqf?

A: It is Wajib for him to first spend in on the maintenance of the Waqf, whether the Waqif stipulated it or not.

Question 1401) If a man made a house Waqf for living, who will repair and maintain it?

A: Whoever lives there will repair and maintain it. If he refuses or is poor, then the judge will rent it out and use the rent to repair it. Once it is repaired he will return it to the one will has the right of living there.

Question 1402) If a Waqf house is destroyed can the rubble be shared amongst those entitled to the Waqf?

A: The judge will use the rubble to restore the Waqf if he needs it. If he does not, he will leave the rubble until it is needed. It is not permissible to share it amongst those entitled to the Waqf.¹⁹⁰

Question 1403) A man declared a Waqf but stipulated the benefits/the trusteeship for himself. What is the ruling?

A: According to Imaam Abu Yusuf رحمته الله عليه it is permissible. According to Imaam Muhammed رحمته الله عليه it is not.¹⁹¹

¹⁹⁰ Because they are only entitled to the benefits of the Waqf, not the substance, which is the right of Allah. The author does not mention selling the rubble. *Al-Bahr ar-Raiq* mentions that if it cannot be used to restore the physical Waqf, it may be sold and the price obtained used for that purpose.

¹⁹¹ As for the first [keeping the benefits] as-Sadr ash-Shahid said that the Fatwa is on the view of Abu Yusuf رحمته الله عليه in order to encourage people to establish Waqf.

Kitabul Laqit [Foundling]

Question 1404) What should someone do who finds an abandoned boy or a girl?

A: He should take the child lest it perish and should protect it. It is called *Laqit* because it has been picked up.

Question 1405) When the one who has discovered the child picks it up, who should bear its expenses?

A: He will spend money from the Baytul Mal [public treasury] on it?

Question 1406) A man finds a child. Can another man take the child from him?

A: No.

Question 1407) If someone claims that the child is his, will his word be accepted?

A: Yes, his word will be accepted under oath.

Question 1408) What if two men both claim that the child is theirs?

A: If one of them can describe some feature on the child's body then it is his. If none can, then it is for both unless one of them claimed the child first, in which case he will get the child.

Question 1409) A child was found in a city or town of the Muslims. A Zimmi claims the child. Will the child's lineage be attributed to the Zimmi?

A: Yes, but the child will be classified as a Muslim because he was found in the realms of Islam.

Question 1410) What is the ruling if the child was found in a town of Zimmis; or a place of worship of the Christians or Jews?

A: It is a Zimmi in this case.

Question 1411) A man claims that the child is his slave. Will his word be accepted?

A: No, the child will be free.

Question 1412) A slave claims that the child is his, will his word be accepted?

A: His word will be accepted but the child will be deemed free.

Question 1413) Money was found tied to the child. To whom will it belong?

A: It will belong to the child because it was in his hands. He is most entitled to own it.

Question 1414) A man found a child. He later wishes to get the child married or to transact in its wealth. May he do so?

A: He may neither get the child married nor may he transact with its wealth. He does however have trusteeship to spend from its wealth and buy necessities from it such as food and clothing.

Question 1415) If someone gives a gift to the child, who must take possession of it?

A: The one who found the child.

Question 1416) Can the one who found him send him to learn a craft or hire out his services?

A: Yes.¹⁹²

Kitabul Luqtah [Found things]

Question 1417) What is a Luqtah?

A: It is wealth flung in some place. It is called Luqtah [picked up] because one who sees it rushes to pick it up.

Question 1418) If someone sees it can he pick it up?

A: If he fears that it will be destroyed it is Wajib to pick up. If, not then it is not Wajib, but permissible. If he picks it up he should make someone witness that has picked it up to safeguard it for its owner and will return it to him.

Question 1419) Once he picks it up what should he do?

A: If it is less than 10 Dirham then he should announce it for a few days. If it is at least 10 Dirham then he should announce it for a longer period up to a year. If the owner claims it, well and good, otherwise he should give it in charity.

Question 1420) What happens if the owner claims it after he gave it away?

A: The owner can validate the charity or he can make the donor liable.

Question 1421) Can a lost sheep, cow or camel be collected like this?

A: Yes.

¹⁹² That is according to al-Quduri. *Al-Jami'as-Saghir* states that it is Makruh to hire out the child and that is more correct.

Question 1422) A man picked up a lost animal. Who is liable for the expenses he incurred to maintain the animal?

A: If he spends on it without the permission of the court, then he has given freely from his side. Nobody is indebted to him. If he did it with the court's permission then that is a debt against the owner.¹⁹³

Question 1423) If the finder spends so much on a found animal that his expenses equal the value of the animal, what should he do?

A: He should present his case before the judge. If the animal has some benefit the judge will hire it out and spend the rental on the animal's maintenance. If it has no benefit and fears that the maintenance costs will cover the value of the animal then he will sell it and safeguard the price. The better option is to order the maintenance of the animal and the costs will be a debt against the owner.

Question 1424) A man spent on the animal with the court's permission. The owner comes to claim it. Can the finder refuse to return the animal until the owner reimburses his costs?

A: Yes.

Question 1425) A man found a lost item. Someone comes and claims that he is the owner. Will he be given it based on his mere claim?

A: No, he must produce evidence.

Question 1426) The claimant cannot produce any evidence but gives a description of the item. What is the ruling?

¹⁹³ It is also said that he should announce until he is satisfied that the owner will not be claiming it. It is appropriate that he announce it at the place he found it and at the Jami' Masjid. If it is something one knows that the owner will not look for, such as date pits, one need not announce it and may use it. However, ownership remains with the owner.

At-Tashil ad-Daruri (Part 1)

A: The finder is allowed to give it to him. However, the court cannot force him to do so.

Question 1427) The finder announced the found item for days/a year. He gave up on finding the owner and intended giving it away in charity. To whom can he give it?

A: He may give it to the poor, not the rich.

Question 1428) Can he not take it for himself?

A: He cannot if he is rich. He may if he is poor.

Question 1429) The finder wished to give it to someone else because he was rich. He gave it to his father/ mother/ adult son/ wife who were poor. Is that permissible?

A: Yes.

Question 1430) Is there a difference with an item found in the Hill or the Haram?

A: No, the ruling is the same.

Kitabul Khuntha [Hermaphrodites]

Question 1431) What is the legal status of a baby born with a penis and vagina i.e. a *Khuntha* [hermaphrodite]?

A: If it urinates from the penis, it is a boy. If it urinates from the vagina it is a girl.

Question 1432) And if it urinates from both organs?

A: It will be attributed to whichever organ it urinates from first. If the urine comes out of both at the same time then it will be attributed

At-Tashil ad-Daruri (Part 1)

to whichever organ more frequent urine comes. This is according to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Hanifah رحمته الله frequency of urine is not considered.

Question 1433) Are there other signs by which sex can be determined?

A: If the hermaphrodite attains puberty and grows a beard or is inclined to women then it is a man. If it grew breasts like a woman/ milk merged from its teats/ it menstruated/ it became pregnant/ it allowed sexual penetration into its vagina, then it is a woman.

Question 1434) What is the ruling if none of these signs emerge?

A: It will neither be classified as male or female but will be called *Khuntha Mushkil* [Undetermined Hermaphrodite].

Question 1435) In which row will the *Khuntha Mushkil* stand for Salah?

A: He will stand between the men and women, behind the children.¹⁹⁴

¹⁹⁴ Rulings regarding it will be according to caution. If he prays with the men then due to the possibility that it is a woman, the men on its right, left and behind should repeat their Salah. If it prays with the women then it should repeat its Salah because it might be a man. Hence it will stand between the men and women. It should cover whatever a woman must cover in Salah because of the possibility that it is a woman. It will be Makruh for its entire life to wear jewellery or silk; to expose itself before men or women; to be alone with a non-Mahram of either sex. If it enters Ihram while not yet pubescent then according to Abu Yusuf رحمته الله, "I do not know about its attire, because if it is male then it is Makruh to wear stitched clothing. If it is female then it is Makruh to leave the stitched clothing." According to Muhammed رحمته الله, "It should wear the clothing of women, because if it is female and it leaves the stitched clothing is more shameful than if it is male and it wears female clothing. There is no fine on it because it is not an adult."

Question 1436) What does the *Khuntha Mushkil* inherit from its father?

A: According to Abu Hanifah رحمته الله it inherits the share of a female. Thus if the deceased left behind a son and the *Khuntha Mushkil*, the son will inherit two-thirds and the *Khuntha Mushkil* one-third, unless it is established otherwise.¹⁹⁵

According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the *Khuntha Mushkil* will get half a male's share plus half a female's share. This is the view of ash-Sha'bi رحمته الله.

Question 1437) Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله adopted the view of ash-Sha'bi. Is there a difference in the interpretation?

A: Yes, according to Imaam Abu Yusuf رحمته الله the money will be divided into 7 between a son and a *Khuntha Mushkil*. The son gets 4 shares and the *Khuntha Mushkil* 3. According to Imaam Muhammed رحمته الله the money will be divided into 12 shares between them. The son will get 7 and the *Khuntha Mushkil* 5.

Question 1438) Who circumcises a *Khuntha Mushkil*?

A: A slave-girl will be bought for him from his money; or if he does not have money the ruler will buy her for him from the public treasury. After she circumcises him, ruler will sell her and return the price to the treasury.

¹⁹⁵ This is an indication that the *Khuntha Mushkil* sometimes inherits as a male, e.g. a woman dies and leaves behind her parents, husband and *Khuntha Mushkil* child. The estate is divided into 12 shares. The husband gets 3; the parents get 4 and the *Khuntha Mushkil* gets 5. Had it been a daughter she would have gotten 6 and the total shares reclassified as 13. Another scenario is that a woman dies and leaves behind her husband, a maternal-brother; and a *Khuntha Mushkil* who is her full sibling. The estate will be divided into 6 shares. The husband gets 3 shares; the brother gets 1 share and the *Khuntha Mushkil* gets the remainder of 2. Had the *Khuntha Mushkil* been a sister she would have gotten 3 shares.

Masail Al Qudoori *Made Easy*

*In Question
Answer Format
(Part 2)*

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Kitabun Nikah [The Book of Marriage]

Question 1438) What is Nikah in Shari'ah?

A: It is a contract deliberately aimed at owning the right to *Mut'ah* [enjoyment]. Ownership of *Mut'ah* refers to a man's right with a woman to sex, touching and kissing.

Question 1439) Why have you stipulated "deliberately"?

A: Because ownership of *Mut'ah* is sometimes attained automatically such as when buying or inheriting a slave-girl.

Question 1440) How is marriage contracted?

A: It is contracted by offer and acceptance, with words in the past tense; or at least one in the past tense and one in the future tense. An example of the first is where the guardian says, "*Zawwajtuha lyyaka* – I have married her to you," and the groom replies, "*Qabiltuha* – I have accepted her." An example of the second is where the groom says, "Marry her to me," and the guardian says, "I have given her to you in marriage." Whilst the groom used the command tense it is interpreted as future tense here.

Question 1441) With which words is the marriage contracted?

A: With *Nikah* and *Tazawwuj* [to marry], also from the side of the guardian if he uses *Inkah/Tazwij* [grant in marriage]; *Tamlik* [grant ownership]; *Hibah* [gift]; and *Sadaqah* on condition that acceptance is uttered thereafter.

Question 1442) What is the ruling if the guardian says, "I have hired her to you/ I have lent her to you/ I have made her permissible for you"?

A: These words do not establish marriage.

Question 1443) Are there other conditions besides offer and acceptance?

A: Yes, it is a condition that there be two witnesses present. They must be free, sane, Muslim adults; or a man and two women with the same qualities mentioned. It is necessary that the witnesses hear the offer and acceptance. The marriage is not valid if the witnesses are deaf or sleeping. It is valid with blind witnesses who listened.

Question 1444) The offer was made with witnesses who are not *adil* [just]. Is the marriage valid?

A: Yes, it is not a condition for the validity of the marriage contract that the witnesses be *adil*.

Question 1445) Is the marriage contract valid if the witnesses are men who were punished with the Hudd for slander?

A: Yes.

Question 1446) A Muslim married a lady-Zimmi. Two Zimmis were the witnesses. Is the marriage valid?

A: It is valid according to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله. The contract is not in effect according to Imaam Muhammed رحمته الله who stipulates Muslim witnesses in this case.

Question 1447) Can a man or woman in Ihram marry?

A: They may marry but not engage in sex and its incitements.

Question 1448) Does the Shari'ah set a limit for the amount of wives one may marry?

A: Yes, a free man can have a maximum of four free or slave women as his wives at a given moment. If he divorces any and her *'iddah* is complete or any die, then he may marry another. A slave however cannot have more than two wives at a time. A woman cannot

marry a man besides the man in whose marriage she is, until he divorces her or dies and she completes her *'iddah*. This is because it is Haram for a woman to be married to two men at the same time.

Question 1449) What is the status of a marriage if the man married two women in a single ceremony but one of them was not permissible for him to marry?

A: The marriage with the woman he was permitted to marry is valid and the other is void. The entire *Mahr* [dowry] will go to the one whose marriage is valid.

Question 1450) A man gives another his sister or daughter in marriage on condition that he in turn gives his sister or daughter in exchange. What is the ruling?

A: Both marriages are valid. The dowry of each will be *Mahr Mithl* [average dowry for that family, status etc]

Question 1451) A man got another man or woman married without permission. What is the ruling?

A: The marriage is suspended until the person who had not been asked either validates or repudiates it. This is called *Nikah al-Faduli* in the terminology of the jurists.

Question 1452) What is the status of *Muwaqqat*¹ and *Mut'ah*² marriages?

A: Both are void.

¹ Marriage with a time limit, e.g. the marriage was performed with witnesses and stipulated to last 10 days.

² He says to a woman, "I shall enjoy you for such an amount of time for such amount of money."

Qasm [Sharing time between wives]

Question 1453) How should a man who has several wives treat them?

A: He must treat them well. This includes being just in his time amongst them.

Question 1454) What form does this justice take?

A: He should share his nights with each. Thus if he spends one night for example with one, he must spend a night with the next one.

Question 1455) Is it Wajib upon him to have sex with his wife when he spends her turn with her?

A: The sharing is Wajib in as far as spending the night is concerned, not with regards sex. Sex requires energy which might not be available every night.

Question 1456) Is there a difference in *Qasm* between a virgin and a non-virgin; between an old and new wife?

A: No, he must be equal whether any is a virgin, non-virgin, old wife or new.

Question 1457) How does he share if his one wife is a free-woman and the other a slave?

A: He will spend two nights with the free wife for every one he spends with the slave.

Question 1458) What is the regulation of *Qasm* during a journey?

A: The wives do not have a right to *Qasm* when the husband is travelling. He may take whom he wishes with him. It would be best if he drew lots and took whomever's name emerged, so that their hearts will be pleased.

Question 1459) One wife was happy to give her *Qasm* to another wife. Is this allowed?

A: Yes, but she can claim her right back whenever she wishes.

Muharramat [forbidden women]

Question 1460) Which women are Haram to marry?

A: There are several categories of Haram – women forbidden by lineage [nasabiyah]; women forbidden by *Rada'* [fosterage i.e. by the drinking of a particular woman's milk]; *Musaharah* [in-laws]; *Jam'* [uniting certain women together in one's marriage; women upon whom there are rights of others; and women of Kufr and Shirk.

Question 1461) Explain the women forbidden by lineage.

A: They are mothers, daughters, sisters, sisters of one's father, sisters of one's mother, daughters of one's brother, daughters of one's sister – all these have been explicitly mentioned in the Quraan in Suratun Nisa. Mothers include a man's actual mother, as well as his grandmothers from both his father's and mother's side and thus going back and forbidding all female ancestors. Similarly daughters include a man's biological daughter, the daughters of his sons and daughter and thus all female descendants. Sisters include full sisters as well as half-sisters from either the mother's or father's side. In this way, daughter of a brother includes daughters of full-brothers, and daughters of half-brothers from either the mother's or father's side. Deduce the same for nieces from one's three kind of sisters. In the same way a paternal aunt is Haram whether she is one's father's full sister or half sister with a common father or half-sister with a common mother. Deduce the same for a maternal aunt in all three cases.

Question 1462) Which women are forbidden through *Rada'*?

A: It is Haram for a man to marry his mother who suckled him; the foster-sister i.e. girl who drank from that mother; and hence all

those who are forbidden through lineage are forbidden through fosterage. There are exceptions which we shall explain in the chapter on *Rada' Inshaallaah*.

Question 1463) Which women are forbidden by *Musaharah*?

A: A man may not marry a woman his father had married, whether intercourse occurred or not. Similarly he may not marry the women of his grandfathers, whether paternal or maternal, or the wives of any ancestor further up. He may not marry his son's wife, his grandson's wife or the wife of any descendant further down – whether these said descendants had intercourse with these women or not. A man may not marry the mother of his wife, whether they had intercourse or not. He may not marry his wife's daughter, whether the daughter was in his care or not.

Question 1464) Which women cannot be married at the same time [Jam']?

A: One may not join blood relatives in marriage at the same time. Thus one may not marry two sisters at the same time as explicitly stated in the Quraan.

Abu Hurayrah رضي الله عنه narrates that Rasulullaah ﷺ forbade marrying a woman when married to her paternal aunt; a paternal aunt when married to her brother's daughter; a woman when married to her maternal aunt; a maternal aunt when married to her sister's daughter. Do not marry the small one when married to the big one. Do not marry the big one when married to the small one. [Abu Dawud and at-Tirmizi]

From this the jurists have derived a general rule. If either one of the two women has to be regarded as a man, and marriage between them would not be allowed (whether by lineage or fosterage) then marrying both at the same time is also forbidden.

Question 1465) Which women cannot be married because of Kufr and Shirk?

A: If a man is outside the pale of Islaam then a Muslim lady may not marry him, whatever religion he may belong to. A Muslim man may not marry a polytheist, an idol-worshipper, a fire-worshipper or any other kind of Kafir³ unless she is a Christian or Jew.⁴

Sundry Masail

Question 1466) Can the prohibition through *Musaharah* arise through Zina as well?

A: Yes, thus if a man commits Zina with a woman or touches her with lust or she touches him with lust, then it is Haram for him to marry her mother or daughter.

Question 1467) Can a man marry at the same time a woman and her ex-husband's daughter from another woman?

A: Yes.

Question 1468) A man divorces a woman. Can he marry her sister?

A: If he has divorced her *Batt*⁵ or *Raj' i* then he may not marry the sister until her *'iddah* is complete.

³ A man may also not have sex with a polytheist or fire-worshipper slave. Kafir anyone who denies the necessary beliefs of Islam. This includes the Qadlanis, the Batiniyah, the Shi'ah and the Ithna 'Ashariyah who claim the Quran is corrupted. Some Muslims have been deceived by their claims of Islam and have married their daughters despite them being Kafirs.

⁴ Although marriage to a female Christian or Jew is permissible, 'Umar رضي الله عنه forbade it. In our times the youth living in Europe, America, Canada and Australia desire Christian women and turn away from Muslim ladies who cannot find spouses. This is a great fitnah which 'Umar رضي الله عنه foresaw. Even worse is when the Christians encourage their women to marry Muslims so that they can entice them to Christianity. Even if they do not become Christians then the woman quite often makes the children Christian. Thus there are Christian offspring from a Muslim parent! What need is there to engage in such a marriage which destroys one's Din?

⁵ Includes Mughallazh and Bain.

Question 1469) A man owns two slaves who are sisters. Can he have sex with them by right of ownership?

A: He may not have sex with both of them, but may choose whichever one of the two he wishes to enjoy. Once has used the first, he may not have sex with the second until he prohibits the first unto himself.

Question 1470) How will he prohibit her unto himself?

A: He will marry her to another man; or make her a Mukatab; or remove her from his possession by freeing her; or gifting her away; or selling her; or giving her as charity.

Awliya and Akfa [Guardians and peers]

Question 1471) Who is the Wali [guardian]?

A: Guardianship of marriage arises from four sources: Qarabah [relationship]; Wala [setting a slave free]; Imamah [government]; and Milk [ownership].

As from the aspect of relationship, paternal relatives ['asabat] are the guardians in the same order as in inheritance. The closest then the closest has preference. The closest guardian to a woman is her son; then her son's son and proceeding down. Then the father; then the father's father and proceeding up. Then a full brother; then a half-brother with a common father. Then a son of a full-brother; then a son of a half-brother with a common father and then proceeding down. Then a paternal uncle who is a full brother of her father. Then a paternal uncle who is a half-brother sharing a father with her father. Then a son of a paternal uncle who is a full brother of her father. Then a son of a paternal uncle who is a half-brother sharing a father with her father. Then proceeding downwards. Then a paternal uncle of her father who is a full brother of her father's father. Then a paternal uncle of her father who is a half-brother sharing a father with her father's father. Then their descendants in this order.

Then from the aspect of Wala which refers to the rights the master retains when freeing a slave; if a woman does not have a guardian from paternal relatives then the owner who freed her from slavery is he guardian. He is counted as the last of paternal relatives. If there are no paternal relatives then her maternal relatives will be her guardians, whether she is a child or adult.

If there are no such relatives at all then the guardianship falls on the Imamah or government, referring to the ruler or judge.

Guardianship of *Milk* refers to the right of the slave's owner (whether the slave is male or female) to get then married, even if they are displeased. If the male or female slave marries without the owner's permission then the marriage is suspended pending the owner's ratifying it or rejecting it.

Question 1472) What is the status of a free adult woman's marriage if she willingly married without the guardian contracting it?

A: According to Imaam Abu Hanifah رحمته الله the marriage is valid as long as she is a sane adult. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the marriage is not validated without the guardian's permission.

Question 1473) Can a guardian force a sane, adult virgin to marry?

A: No. She has a greater right to herself whether she is a virgin or not.

Question 1474) We accept that she cannot be forced. However, women generally do not get married themselves, but their guardians get them married. Must the guardian ask her permission?

A: Since he cannot force her he has to ask her permission, "I wish to marry you to that person." If she agrees then the marriage will be valid or else if she refuses it is not.

Question 1475) A virgin is shy to respond verbally. How can she give her consent?

A: If the guardian asks her and she remains silent or laughs or cries without any sound then that counts as consent. If someone besides the guardian asks her or a guardian besides whom there is a more entitled guardian then her consent must be expressed verbally.

Question 1476) If she refuses, what can the guardian do?

A: He cannot marry her when she refuses.

Question 1477) A woman married and became a widow. Must her guardian ask her permission if he wishes to get her married a second time?

A: It is necessary for him to ask her and it is also necessary for her to give verbally consent. Her silence, laugh or cry will not suffice as consent.⁶

Question 1478) A woman never got married, but her physical virginity was broken by jumping, menses, a wound, or through lengthy period of not marrying. Is she legally a virgin or not?

A: She is likely a virgin. Her silence and the like will suffice as her consent.

Question 1479) A woman did not marry and terminated her virginity through fornication. What is her status in this mas-alah?

A: She is legally a virgin according to According to Imaam Abu Hanifah رحمته الله. Hence her silence will suffice. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله she is not a virgin.

Question 1480) A man got his adult virgin daughter married. Her new husband says, "When the proposal reached you, you remained

⁶ The Nabi ﷺ said, "Do not get a widow married until her order has been asked. Do not get a virgin married until her consent has been asked." They asked, "Ya Rasulallah! How is her consent?" He replied, "If she keeps quiet." [al-Bukhari and Muslim]

silent." She replies, "I did not keep quiet. I rejected it." What is their status?

A: According to Imaam Abu Hanifah رحمته الله her word will be accepted and she need not take an oath. This is amongst those Masail wherein no oath is demanded according to him but is demanded according to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله.

Question 1481) A guardian got a child, male or female, married without asking permission. Is the marriage valid?

A: Yes it is valid. The guardian need not ask them permission, and this is what is meant by the guardian forcing them. This rule is general for the girl, whether she is a virgin or not.⁷

Question 1482) A closest guardian is absent and a need arose to get them married. Can the further guardian get them married?

A: If the close guardian is firmly absent then the far guardian can get them married.

Question 1483) What is a firm absence?

A: To be in a place where caravans pass only once a year or once in while.

Question 1484) An insane woman has two guardians - her father and her son. Who is her guardian in marriage?

A: According to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله it is her son. According to Imaam Muhammed رحمته الله it is her father.

Question 1485) The guardians got children married in their childhood. Do the boy and the girl have a right to cancel the marriage when they attain puberty?

A: If her not being a virgin is due to her guardian got her married when her husband died before she attained puberty.

A: If a father or grandfather got them married then they have no choice. If someone else got them married then each of them may decide whether to continue the marriage or to cancel it.

Question 1486) Can non-male relatives such as sisters, mothers and mothers' sisters get a small boy or girl married?

A: Yes.⁸

Question 1487) A father got his small daughter married and halved the *Mahr Mithl*, or the father of a small boy got him married and increased on the *Mahr Mithl*. What is the ruling?

A: The father and grandfather may do that, nobody else may.

Question 1488) Are there any other conditions for guardianship besides Qarabah and the others already mentioned?

A: Yes, the guardian must be a sane adult. A child or madman does not have guardianship.

Question 1489) What is the status of the guardianship of a Kafir?

A: A Kafir cannot have guardianship over a male or female Muslim, even if he is the closest person to him/her.

Question 1490) You have mentioned that a guardian cannot force a woman to marry. If an adult woman marries and reduces her dowry to less than *Mahr Mithl*, can the guardian object to what she has chosen for herself?

A: According to Imaam Abu Hanifah رحمته الله the guardians have a right to object to her reduction until her *Mahr Mithl* is completed or her husband leaves her.

Question 1491) A woman's guardian is her paternal uncle's son. He marries her to himself. Is this permissible?

⁸ Meaning that when there are no relatives from the male side.

A: It is and the marriage is valid if there were witnesses present.

Question 1492) An adult woman authorised a man to marry her to himself. They got married in the presence of witnesses. Is the marriage valid?

A: Yes.

Kafa [peerage]

Question 1493) What is *Kaf* and *Kafaah*?

A: Kafaah is equality or peerage. Kaf is someone who is one's equal or peer. Kafa in marriage is based on lineage, Din, wealth and occupation.

Question 1494) What is peerage in Din?

A: It is matching in religious observance i.e. Taqwa and piety. A Fasiq [open sinner] is not a peer for a pious Muslimah.

Question 1495) How is peerage in wealth established?

A: If the husband can pay her dowry and living expenses then they are peers in wealth.

Question 1496) What is the meaning of peerage in occupation?

A: It means that the husband should not be of such occupations which are looked down at such as cupping, tanning, sweeping etc.

Question 1497) A woman married a non-peer. Her guardians object. What is the status of their objection?

A: They are entitled to object and may separate the couple.⁹

⁹ To remove embarrassment from themselves [al-Hidayah]. It is necessary that a judge be brought to separate them [al-Jawharah].

Marriage of male and female slaves

Question 1498) Can a woman marry her slave; and can a man marry his slave-girl?

A: Neither of the may do that. However, a man may benefit from his slave-girl in the same was as he benefits from his wife if the slave-girl is a Muslim, Christian or Jew. He may not have intercourse with a fire- or idol-worshipper. Another condition is that he may not have sex with two sisters as we had explained before.

Question 1499) Can a Muslim man marry the slave-girl of another man?

A: Yes, if she is a Muslim, Christian or Jew.

Question 1500) What is the ruling of marrying a slave-girl when already married to a free woman; and marrying a free woman when already married to a slave-girl?

A: The first is not permissible; the second is.

Question 1501) A man got his slave-girl married and then freed her. Does she have a right concerning maintaining the marriage?

A: She has a choice, irrespective whether her husband is free or a slave.

Question 1502) A slave-girl married without her owner's permission. She was then set free. What is the status of her marriage?

A: The marriage is valid and she has no choice.

Question 1503) A man got his slave-girl married. Must he send her to live in her husband's house?

A: He is not obligated to. She must still serve him. Her husband may have intercourse with her when they find an opportunity.

Question 1504) If he keeps her at his house, who must pay her living expenses?

A: It is the duty of her husband.

Question 1505) The owner let her stay in her husband's house. He then felt a need to use her services. Can he do that?

A: Yes.

Question 1506) A slave married with his owner's permission. Who must pay the dowry?

A: If the owner does not give it then it is a debt against the slave who will be sold to pay it.

Mahr [Dowry]

Question 1507) What is Mahr?

A: The money which is Wajib upon the husband upon contracting the marriage in exchange for the benefits of the private part, whether by specification or by the contract itself.¹⁰

Question 1508) What are the minimum and maximum amounts of Mahr?

A: The minimum is 10 Dirham. If less than 10 was stipulated then she must still receive 10. There is no maximum. Whatever they willingly agreed upon becomes Wajib upon him to pay.

Question 1509) If a Mahr was not named, and the offer and acceptance took place in the presence of witnesses, is the marriage valid?

A: The marriage is valid and she must be given *Mahr Mithl* if he has sex with her or dies after the marriage. If he divorces her before

¹⁰ Synonyms for Mahr include Sadaq, Nihlah and Faridah.

sex or *Khalwah Sahihah* [complete seclusion] then she is entitled to *Mu'ah* which we shall define later InshaAllaah.

Question 1510) What is the ruling if he marries her on condition that she will not receive any dowry?

A: The ruling will be the same as one who did not mention her dowry in terms of *Mahr Mithl* or *Mut'ah* as we had just mentioned.

Question 1511) A Mahr was stipulated and then he divorced her. Is the entire amount *Wajib*?

A: If he had sex; or died with her in his marriage even without sex; then she is entitled to the entire amount. If he divorced her without sex or *Khalwah Sahihah* then she is entitled to half. Allaah says, "If you divorce them before touching them and you had stipulated an amount then it is half that amount."

Question 1512) A Muslim woman accepted wine and pig as dowry. What is the ruling?

A: The marriage is valid and she is entitled to *Mahr Mithl*.

Question 1513) A woman got married for a stipulated Mahr. He then increases on it or she reduces it. What is the ruling?

A: Both scenarios are allowed. However, his increase becomes obligatory if he has sex with her or dies with her in his marriage; while the increase is forfeit if he divorces her before sex.

Question 1514) A man marries a woman for 1000 Dirham and on condition that he will not take her out of the city, not marry another woman while they are married. What is the ruling?

A: If he fulfils the condition then she gets the stipulated amount. If he takes her out of the city or marries another woman then she is entitled to *Mahr Mithl*.

Question 1515) He marries her for an unspecified animal.¹¹ Is that correct?

A: The stipulation is valid. She is entitled to a medium quality animal. The husband may choose to give her the animal or to pay her its price.

Question 1516) He married her for an unspecified cloth. What must he pay?

A: *Mahr Mithl*.¹²

Question 1517) They married and no Mahr was stipulated. Thereafter they both agreed on a Mahr. What is she entitled to?

A: She is entitled to what they agreed upon if he has sex with her or dies while she is in his marriage. If he divorces her before sex or complete seclusion, then she is entitled to *Mut'ah*.

Question 1518) A man marries a free woman in exchange for serving her for a year or teaching her the Quraan. Is this valid?

A: The stipulation is invalid. She is entitled to *Mahr Mithl*.

Question 1519) What is the ruling if a slave marries a free woman with his owner's permission in exchange for serving her for a year?

A: The marriage is valid and she is entitled to a year's service from him.

Question 1520) The guardian takes liability for the woman's dowry. Is this valid?

¹¹ What is meant here is that the type of animal such as horse or donkey was given, but no further description. If even that was not mentioned then he must pay *Mahr Mithl*.

¹² Because there are different types of cloths. If however he specified, e.g. *Hirawi*, then it is valid.

A: Yes, she may demand her dowry from the guardian or her husband.

Question 1521) The marriage was Fasid and the court separated the couple. What is the status of giving the dowry?

A: She is not entitled to any Mahr if they were separated before sex; even if there was complete seclusion. If they did have sex then he will pay her *Mahr Mithl* but not more than the Mahr they had agreed upon.

Question 1522) What is the status of her 'iddah after such a separation, and attribution of lineage if she gives birth to his child?

A: She will fulfil the *iddah* of divorce and the child will be attributed to him.

Question 1523) The *Majbub* [amputated penis] was alone with the woman and then divorced her. What Mahr does he owe her?

A: According to Imaam Abu Hanifah رحمته الله and he must pay the full Mahr because she had surrendered herself to him. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله she is entitled to half Mahr.

Khalwah Sahihah [Complete seclusion]

Question 1524) What is *Khalwah Sahihah*?

A: That there be no obstacle to sex, e.g. none of them is sick, fasting Ramadan, being in Ihram for Hajj or 'Umrah nor is the woman in menses

Question 1525) Why have you stipulated that the fast be that of Ramadan?

A: If a man is alone with his wife whilst either one is keeping a voluntary fast then it is deemed *Khalwah Sahihah*.

Mahrul Mithl

Question 1526) You have mentioned *Mahrul Mithl* over and over again in your answers. What is it?

A: Dowry similar to the dowries of her sisters, paternal aunts and daughters of paternal uncles if these women are similar to her in age, beauty, wealth, intelligence, piety, city and time. Her mother and maternal aunts are not considered if they are not of the same tribe as her.

Mut'ah

Question 1527) What is *Mut'ah*?

A: It is three pieces of clothing of her worth¹³, *Dir'* [loose outer garment with sleeves], *Khimar* [head covering] and *Milhafah* [wrap].

Question 1528) For which divorcees is *Mut'ah* Wajib and for which is it only recommended?

A: It is Wajib for a woman who husband divorced her without having sex with her and they did not stipulate what is Mahr is. It is Mustahba for every other divorcee except for woman whose husband divorced her without having sex with her but did mention a specific Mahr.

Masail related to defects

Question 1529) A man married a woman who has a defect. Can he cancel the marriage?

¹³ This would seem to mean that the clothing be according to her status, whereas it is according to his, because Allaah says, "Upon the wealthy his ability and upon the straitened his ability."

A: He may not. He may however divorce her at any time.

Question 1530) If a woman marries a man and she then discovers him to be mad or a leper, can she claim *Faskh* (termination)?

A: According to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله she may not. According to Imaam Muhammed رحمته الله she may.

Question 1531) A woman discovered her husband to be impotent. She requested the judge to terminate the marriage. What should he rule?

A: The judge will summon the husband and give him a year's respite to undergo treatment. If he has intercourse with her in that period she has no further option. Otherwise the judge will separate them if she so requests [after the year of unsuccessful treatment].

Question 1532) What is the status of the separation if the judge separates them?

A: It is deemed Talaq Bain.

Question 1533) What is the status of the Mahr in this case?

A: Full Mahr if he was secluded with her.

Question 1534) What will the judge rule if she finds her husband *Majbub* [amputated penis] and demands that he separate them?

A: He will immediately separate them because there is no hope that the husband will be able to have sex for the rest of his life.

Question 1535) And if she finds him castrated and demands a separation?

A: He will be given a year's respite just as for an impotent man.

Masail related to differences in religion and abode

Question 1536) A woman embraces Islaam. Her husband is a Kafir. Will she be separated from him because of her Islaam?

A: She will not be separated solely because of her Islaam. The judge will offer Islaam to him. If he accepts then she remains his wife. If he refuses, then the judge will separate them. According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله the separation will be a Talaq Bain. According to Imaam Abu Yusuf رحمته الله it is a separation without divorce.

Question 1537) A man married to a fire-worshipper embraces Islaam. Will she be separated from him?

A: She will not be separated solely because of her Islaam. The judge will offer Islaam to her. If she accepts then she remains his wife. If she refuses, then the judge will separate them. This separation will not be a divorce because it arose from her refusal.

Question 1538) What is the status of the Mahr in that case?

A: If they had had intercourse then she is entitled to full Mahr, other none.

Question 1539) The husband of a Christian/Jew embraces Islaam. Will they be separated?

A: There is no need for separation. If a Muslim man can initiate a marriage with a Christian/Jewish woman then he can also maintain his marriage with her.

Question 1540) A woman in the land of the Kuffar is married to a Kafir. She embraces Islaam. Are they separated?

A: She will not be separated from him until she completes three menstrual periods. When she finishes the third, then they are separated.

Question 1541) A husband/wife left the lands of the Kuffar for the lands of the Muslims, as a Muslim. When are they separated?

A: His/her leaving for the lands of Islaam separates then in itself. There is no additional factor required.

Question 1542) A woman embraces Islaam in the lands of the Kuffar and makes Hijrah to the lands of Islaam. Her husband is there. Must she spent an 'iddah?

A: No, she may marry immediately according to Imaam Abu Hanifah رحمته الله if she is not pregnant. If she is pregnant then she may not marry until she gives birth.

Question 1543) One of the spouses apostatises from Islaam – Allaah protect us. When does the separation occur?

A: They are separated immediately without divorce.

Question 1544) What is the status of the Mahr in that case?

A: If it is the husband who is the apostate and they had had sex, then he owes her the full Mahr. If they did not, then he owes her half Mahr. If the wife is the apostate then she is still entitled to full Mahr if she apostatised after sex; if before then she is not entitled to Mahr.

Question 1545) A couple abandoned Islaam together – Allaah save us – and returned to Islaam together. What is the ruling on separating them?

A: They will not be separated and they remain married to each other.

Question 1546) If a man or a woman leaves Islaam whom can they marry?

A: A male apostate may not marry a female Muslim, or an apostate, or a woman who was always a Kafir. Similarly a female

apostate may not marry a Muslim, or an apostate, or a man who was always Kafir.

Question 1547) A Kafir husband or wife living in the lands of the Kuffar was captured and brought to the lands of Islaam. When will they be separated?

A: They are separated immediately upon entry into the lands of Islaam. If they are captured together then their marriage is not terminated.

A child follows the better parent

Question 1548) Of his two parents, only a child's father is Muslim. Whose religion does the child follow?

A: He will follow his father. If any parent accepts Islaam and the child is small, then the child will be Muslim due to whichever parent's Islaam.

Question 1549) A child's one parent is a Christian/Jew and the other a Fire-worshipper. Which religion will he follow?

A: He will follow the Christian/Jew on the principle of following the parent with the better religion.

NOTE:

1. If a Kafir marries without witnesses or marries during the 'iddah period and then the couple embraces Islaam then their marriage is valid if those practices are valid in their religion. They are not required to perform a second marriage.
2. If a Fire-worshipper marries his mother or daughter and then they embrace Islaam, they will be separated.

Kitabur Rada' [breastfeeding]

Question 1550) What is the maximum allowed period for breast-feeding after which it is not allowed?

A: According to Imaam Abu Hanifah رحمته الله it is 30 months. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is 2 years.¹⁴

Question 1551) Which laws apply due to breastfeeding?

A: If breastfeeding has taken place within the period as per the difference in opinion, be it a little or much, then marriage is Haram between two *Radi'*, and between a *Radi'* and its *Murdi'ah* [wet-nurse], her ancestors, descendants and her relatives of the same line. Allaah has mentioned the prohibition of marrying one's wet-nurse and sisters through breastfeeding. Rasulullaah ﷺ said, "Allaah has forbidden through breastfeeding what He has forbidden through lineage."¹⁵

Question 1552) What is the ruling if a woman breastfeeds a boy or a girl after the prescribed period?

A: Breastfeeding after the prescribed period is not permissible. If done it does not bring about the prohibition of marriage.

Question 1553) Explain the regulations of prohibition through breastfeeding in detail.

A: Understand and remember the following Masail:

1. If a boy and a girl drank from the same woman, they may not marry each other.¹⁶
2. A woman may not marry any descendant of the woman breastfed her.
3. When a woman breastfeeds a girl, that girl is prohibited unto her husband, her ancestors and her descendants. The husband through whom the nurse got her milk will be the girl's father through breastfeeding. The jurists term this mas-alah *Labanul Fahl* [stallion's milk].

¹⁴ This is more correct [*al-Bahr ar-Raiq* (229/3)]

¹⁵ Narrated by Muslim

¹⁶ Nor may they marry her, her children, or grandchildren etc.

4. A boy may not marry the sister of the husband of the woman who breastfed him, because she is his paternal aunt through breastfeeding.
5. A man may not marry the wife of a boy who is his son through breastfeeding just as he cannot marry the wife of his biological son.
6. A man may marry the sister of his *Radi* brother just as in certain scenarios one may marry one's brother's sister e.g. someone has a half-brother with a common father. He can marry the half-brother's half-sister who shares the same mother with the half-brother.

Question 1554) You mentioned that whoever is Haram to marry through lineage is Haram to marry through breastfeeding, with certain exceptions. What are these exceptions?

A: The following are exceptions:

1. One may marry the mother of one's sister through breastfeeding, but not the mother of one's biological sister.
2. One may marry the sister of one's son through breastfeeding, but not through lineage.
3. One may marry the mother of the paternal uncle and paternal aunt through breastfeeding, but not through lineage.

Question 1555) The milk of two women was mixed and fed to a boy or girl. To which of the two will the prohibition of marriage be attributed?

A: According to Imaam Abu Yusuf رحمته الله it will apply to whichever one's milk was the most. According to Imaam Muhammed رحمته الله it applies to both.

Question 1556) If a virgin gets milk in her breast and she feeds and baby, what is the ruling?

A: The prohibition of marriage applies.

Question 1557) If a man should produce milk and he breastfeeds a boy or a girl, do the laws of marital prohibition apply?

A: No.

Question 1558) A boy and a girl drank from the same sheep. Do the laws of marital prohibition apply?

A: No.

Question 1559) A man married an adult woman and a girl of breastfeeding age. The adult breast-fed the girl. What is the ruling of this breastfeeding?

A: Both wives become Haram for him.

Question 1560) What is the status of the Mahr in the above case?

A: If he did not have sex with the adult then she is not entitled to Mahr and the girl receives half Mahr. He will claim the half Mahr from the adult if she had intended mischief. If she did not then she is not liable.

Question 1561) How is *Rada'* proven?

A: Through the Arsh (testification) of two men, or a man and two women. The Arsh of only women is not accepted.

Question 1562) A woman's milk was mixed with water. A boy or a girl drank the mixture. Do the laws of marital prohibition apply?

A: If it mostly milk they apply. If mostly water then they do not.

Question 1563) And if the woman's milk was mixed with food?

A: According to Imaam Abu Hanifah رحمته الله they do not apply even if the milk is dominant. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله they apply if the milk is dominant.

Question 1564) And if the woman's milk was mixed with medicine?

A: The laws apply if the milk is dominant.

Question 1565) A woman died. Her milk was extracted and put in a vessel and fed to a baby. What is the ruling?

A: The laws of marital prohibition apply.

Question 1566) A woman's milk was mixed with a sheep's milk. What is the ruling if a baby drinks it?

A: If the woman's milk is dominant then the laws of prohibition apply. They do not if the sheep's milk dominates.

Kitabut Talaq [Divorce]

Question 1567) If a man marries a woman and they are not compatible, what should he do?

A: Allaah commands, "Treat them [wives] with goodness." If it becomes impossible and he wishes to separate then Allaah has made a way out, which is for the man to divorce his wife. He will take her out of his marriage. The man is called *Mutalliq* and the woman is called *Taliq*.

Question 1568) Are there different kinds of divorce?

A: There are three kinds:

1. Ahsanut Talaq [the best divorce]
2. Talaqus Sunnah
3. Talaqul Bid'ah

1. The first means to divorce her once whilst she is in a state of purity in which the husband did not have sex with her. He then does not have sex with her until her *'iddah* finishes.
2. The second is to divorce thrice the wife whom he had sex with. The three pronouncements will be in three purity periods without sex. The jurists also call this at-Talaq al-Hasan. The Sunnah in this divorce is from two aspects – time and number. The Sunnah of

amount applies equally to a woman who had sex with her husband [*Madkhul biha*] and a woman who did not [*Ghayr Madkhul biha*]. The Sunnah of time is specific to the woman whom the husband had sex with. He should divorce her in a purity period in which they did not have intercourse.

3. The third kind is to pronounce three divorces in a single sentence; or to divorce her thrice during a single purity period. If a man pronounces a single divorce on his *Madkhul biha* the divorce falls against her. However, she will not separate from him until the completion of her 'iddah. If he wishes to take her back he may do so during her 'iddah. If she is *Ghayr Madkhul biha* she will separate from him upon one divorce. In this case the husband may not take her back whether during or after the 'iddah. InshaAllaah we shall elaborate on this.

Question 1569) What is the status of Talaq Bid'ah?

A: The divorce occurs even though the husband is a sinner for transgressing the Sunnah.

Question 1570) Does divorce occur when given during menses?

A: It occurs but is forbidden. He is obligated to take her back.¹⁷ If he then wishes he may divorce her in a purity period in which they did not have sex. This is if she is *Madkhul biha*. If she is *Ghayr Madkhul biha* he may divorce her during menses.

Question 1571) What is the status of divorcing her when she is pregnant?

A: It is permissible even if it is following intercourse.

Question 1572) A man intends divorcing a *Madkhul biha* thrice according to the Sunnah. How is it done?

¹⁷ If it is a Raj'i Talaq

A: He will pronounce the first divorce in a purity period in which they did not have sex. He will then pronounce the second divorce in the next purity period and the third in the third period.

Question 1573) He intends divorcing her according to the Sunnah, but she does not undergo menses. What should he do?

A: He should divorce her once in the month. When the month passes he should divorce her in the second month, and like that the third divorce in the third month.

Question 1574) Can one divorce one's wife who does not undergo menses whereby there is no gap of time between the divorce and having had sex with her?

A: It is permissible.

Question 1575) A man wishes to divorce his pregnant wife according to the Sunnah method. How will he separate the three divorces?

A: He will separate them in months according to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله. According to Imaam Muhammed رحمته الله he cannot divorce her according to Sunnah and must divorce her once only.

Question 1576) Does the divorce of every husband take effect?

A: The divorce of a husband falls if he is a sane adult. The divorce of a child, madman and sleeping man does not take effect.

Question 1577) What is the status of the divorce of a drunken man and one forced to give divorce?

A: The divorce occurs.¹⁸

¹⁸ Referring to a drunk who still has his senses. However, if he has completely lost his senses then the divorce does not occur e.g. he cannot tell the difference between a man and a woman; the earth and the sky.

Question 1578) What is the status of the divorce of a mute?

A: His divorce by indication occurs.

Question 1579) A slave marries a woman with the permission of his owner. Who can divorce her?

A: The slave has the right to divorce her. If the owner divorces her it does not fall.

The occurring of divorce

Question 1580) You have mentioned that a man can take his wife back after pronouncing a Talaq Raj'i. Are there divorces whereby he cannot take her back?

A: There are three types of divorce:¹⁹

1. Talaq Raj'i [returnable] whereby he may take her back during the 'iddah.
2. Talaq Bain [separating] whereby he may not take her back except with a new marriage.
3. Talaq Mughallazh [severe] whereby she may not marry that husband again until she marries another man after her 'ddah. They must have sex and then if he dies or divorces her, she may marry the first husband after passing her 'iddah.

Question 1581) How do Talaq Raj'i and Bain occur?

A: There are two kinds of divorce with regards wording, *Sarih* [explicit] and *Kinayah* [indirect].

Drink refers to consuming any intoxicant including honey wine, and drugs like opium etc.

¹⁹ The first categorisation was in regard to being in line with the Sunnah or against it. This categorisation is in regards the effect of the divorce.

Explicit is when the husband says, "You are divorced/you are now a divorcee/ I divorce you." This divorce is *Raj'i* and only one occurs even if he intended more than one. No attention is paid to whether he actually intended the divorce or not. Amongst those words deemed explicit are, "You are Talaq/ You are a divorcee in divorce/ You are a divorcee given a divorce. If he had no intention with these words then it is one *Raj'i* divorce. If he intended two, then it is still one. However, if he intended three then it is three. If he says, "You are divorced. You are divorced," then it is two *Raj'i*. Allaah says, "If divorce has been given twice retain her in kindness or leave her in an amicable manner."

The second kind, *Kinayah*, is when the words are not explicit. The divorce will not occur except with an intention or an indication of the condition.

Question 1582) Please explain further?

A: There are two kinds of Indirect words of which three words result in one *Raj'i* divorce when if he intended two or three. They are, "Go into 'iddah/ Clear your womb/ You are now single." The rest of the Indirect words result in one *Bainah* if he intends one or two, but if he intends three it will be three. These words include, "You are *Bain*, *Battah* and *Batlah* [separated, broken and cut off – because she is cut off from returning]/ You have free rein/ Go join your family/ You are free/ You are alone/ I have gifted you back to your family/ You choose/ I have separated from you and you are free/ Veil yourself from me/ Cover yourself from me/ Be a stranger to me/ Seek another husband."

If he did not intend divorce then the divorce does not occur with these words. If however it was within the discussion of divorce then legally²⁰ it is a divorce, but not between him and Allaah until he intends it as such.

²⁰ Meaning amongst humans. If he protests at a court that he did not mean it then his protest will not be accepted. This applies to words which can be given to the woman as reply to her request for divorce and not a refusal e.g. "Go into 'iddah/ The matter is in your hands, you choose."

If it was not in a discussion of divorce but both were angry or arguing, then the divorce occurs with any indirect word which was not an insult or abuse. If the insult or abuse was intended as divorce then the divorce occurs.

In Summary:

Raj'i Divorce occurs with explicit words.

Related to this is when he says, "Go into 'Iddah/ Clean your womb/ You are single." *Bain* divorce is with indirect words when he intends thereby divorce or the condition indicates thus. The *Talaq Raj'i* becomes *Bain* if the 'iddah passes and he did not take her back in it.

Mughallazh Divorce occurs with three pronouncements, whether it be in three purity periods, three months, in a single sentence, in three sentences in the same purity period, or he intended three divorces with indirect words – except that which are exception from it.

Question 1583) What kind of divorce falls if the husband pronounced it with an additional description?

A: It will be *Bain*. The woman will be separated from him and he may not take her back, e.g. "You are divorced *Bain*/ You are divorced in the worst way/ in the most shameful divorce/ the divorce of the devil/ *Talaqul Bid'ah*/ You are divorced like a mountain/ a houseful of divorce."²¹

Question 1584) Does the divorce occur if he attributes the divorce to her body parts?

A: The divorce occurs if he attributes it to in her entirety or that which indicates her entirety, e.g. "You are divorced/ Your neck is divorced/ Your soul is divorced/ Your body is divorced/ Your physique is divorced/ Your vagina is divorced/ Your face is divorced."

²¹ If he says to her you are divorced in the most intense way/a thousand times/ a houseful of divorce," then that is one *Bainah* unless he intends three."

Divorce does not occur with, "Your hand is divorced/ your leg is divorced," because hands and legs do not symbolise the entirety.

Question 1585) If he instead mentions a fraction of her, e.g. half/a third of you is divorced?

A: The divorce occurs.

Question 1586) If he fractions the divorce instead e.g., "You are given a third/half/two-thirds divorce."

A: One complete divorce occurs because divorce cannot be fractioned.

Divorce with conditions

Question 1587) A man says, "If I marry you then you are divorced." What is the status of this addition?

A: The divorce occurs immediately after the marriage.

Question 1588) If he adds a condition like, "If you enter the house you are divorced," what is the ruling?

A: The divorce will occur upon fulfilment of the condition – whatever the condition is – except if he says, "You are divorced," and immediately adds, "If Allaah wills." Divorce does not occur with that condition.

Question 1589) If he says to a stranger, "If you enter the house you are divorced." He then marries her and she enters the house. Does the divorce fall?

A: No divorce takes place. It can only occur after the fulfilment of the condition if he "owned" the woman in terms of marriage rights at the time of making the oath or it is attributed to ownership.

Question 1590) What words are used in these conditions, what is the status of using them?

A: The words include *in*, *iza*, *iza ma*, *mata* and *mata ma* [if/when]. If the divorce is attributed to one of these words, then the divorce takes place after the condition occurs. He is then released from the oath.

Question 1591) What do you mean by release from the oath?

A: The effect of the condition takes place only once. When it occurs the divorce occurs. Thereafter if the condition arises again there will not be another divorce from that oath and condition.

Question 1592) Are there such words whereby the divorce will recur if the condition recurs?

A: Yes it recurs with *kullama* [every time/whenever].

A: A man says, "Every time you enter the house you are divorced." She enters the house and is divorced. She enters again and is divorced again. She enters again and is divorced again. Thereafter there is no divorce from this because there is no more than three divorce in Shari'ah.

Question 1593) She was divorced thrice because of the recurring condition as above. She marries another man and then remarries the first husband. If she again enters the house is she divorced?

A: No.

Question 1594) If he says, "Every woman I marry I divorce," will each woman be divorced whom he marries for the rest of his life?

A: Yes, his words encompass every woman.

Question 1595) He says to her, "If you enter the house you are divorced." He then divorces her with a normal pronouncement. After

her 'iddah he remarries her. She then enters the house. Does the divorce fall?

A: Yes, the loss of the marriage does not fulfil the oath. It is fulfilled when the condition is found and she is divorced.

Question 1596) He attached a condition to divorce but divorced her normally before the condition could occur. She was separated from him and then the condition occurred. He then remarries her. Is she divorced?

A: No, the condition occurred outside of his ownership. He is released from the oath.

Question 1597) He made a divorce attached to a condition. The couple then dispute whether the condition is found. Whose word will be accepted?

A: His word will be accepted, unless she produces proof that the condition is found.

Question 1598) Certain matters are only known to the wife. If he made a condition of such matters then whose word is accepted, e.g. he says, "If you bleed your menstruation then you are divorced." How will the matter be resolved if they dispute the occurrence of the condition?

A: In such matters affecting the woman personally her word will be accepted.

Question 1599) What do you mean, "...affecting the woman personally"?

A: It will be clear to you from the following examples. He says to her, "If you menstruate then you and your co-wife are divorced." If she says, "I am menstruating," then she will be divorced and not the co-wife, unless the husband accepts her word." If he says, "If you love me/ are angry with me then you are divorced." She says, "I love you/I am angry with you." Her words will be proof

against her even if they contradict what is in her heart. Her words will not be used against a third party however.²²

Question 1600) If he says, "If you menstruate you are divorced/ If you menstruate a menses period then you are divorced," what is the status of these conditions?

A: They have two separate rulings.

When he says, "If you menstruate you are divorced," and she sees her menstrual blood, the divorce does not occur until she bleeds for three days and nights. Upon the completion of the three days and nights it will be ruled in retrospect that the divorce fell upon the bleeding. That is because bleeding for less than that is not menstruation, but is *Istihadah*. That is why she must wait for the minimum period of menses.

When he adds, "...a menses period ..." then she is not divorced until she enters her purity after her menses. The difference between the two lies in the additional words will stipulate a complete menstruation.

Question 1601) If he says, "You are divorced in Makkah," and she is not in Makkah, what is the ruling?

A: She is divorced immediately wherever she may be. Similarly she is divorced if he says, "You are divorced in the house," and she is not in the house. He did not make *entry* of Makkah or the house a condition for divorce.

Question 1602) If he says, "You are divorced if you enter Makkah," is that different from the above question?

A: Yes, here he makes entry into Makkah a condition, hence the divorce does not occur until she enters Makkah.

Question 1603) If he says, "You are divorced tomorrow," when does the divorce occur?

²² Such as if he said, "If you love me then you and your co-wife are divorced." If she says, "I love you," then she is divorced but not the co-wife.

A: When true dawn rises.

Question 1604) If he says, "You are divorced thrice except one/thrice except two," what is the status of the exception?

A: The exception will be taken into consideration; hence two divorces occur in the first scenario and one divorce in the second scenario."

Divorce before consummation

Question 1605) What is the ruling of divorce before consummation?

A: If a man pronounces divorce before consummation then the divorce occurs. If he pronounces three divorces in one sentence then all occur. If he pronounces them separately, she becomes *Bain* with the first pronouncement and the second and third do not fall on her. Divorce in the case of non-consummation will never be *Raj'i*. It will either be *Bain* or *Mughallazh*.

Question 1606) He says to her, "You are divorced one and one/ one before one/ one after it another one." How many divorces fall on her?

A: Only one falls in all these cases.

Question 1607) If he says, "You are divorced one after one/ one with one/ one with it one," how many fall in these cases?

A: Two divorces occur in all these cases.

Question 1608) He says, "If you enter the house you are divorced one and one." She enters the house. What is the ruling?

A: According to Imaam Abu Hanifah رحمته الله one divorce occurs. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله two occur.

NOTE: That distinction is for a woman whose husband did not consummate the marriage. If it was consummated then two apply in all cases.

Tafwidut Talaq ***[Giving the wife option of divorce]***

Question 1609) A man says to his wife, "Choose yourself," meaning divorce or he says, "Divorce yourself." Can she divorce herself?

A: She may divorce herself from him in these two cases as long as she remains in that gathering. If she leaves the gathering or begins doing some other deed then she loses the option, unless he said, "Divorce yourself whenever you want to." She may then divorce herself in the gathering or thereafter.

Question 1610) If he told her, "Choose yourself," and she does in the gathering, what is the ruling?

A: A single Bain divorce occurs. Her divorce will not be three, even if the husband intended that. For the divorce to occur, it is necessary that either he or she mention *nafs* [self].

Question 1611) If he told her, "Divorce yourself," and she did so, which divorce falls?

A: One Raj'i. If the husband intended three then three occurs. If he intended two then that is not correct unless his wife is a slave.

Question 1612) If he appoints an agent and says to him, "Go divorce my wife," is the agency confined to the gathering?

A: No, he may divorce her in the gathering and after, if he left it general and did not mention any wish. If he says, "Divorce her if you wish," then it is confined to the gathering.

Divorce on the death-bed

Question 1613) Are there situations when the woman still inherits from the man after he divorces her?

A: If a man divorces his wife Talaq Bain during his final illness and dies before her 'Iddah is complete, she inherits from him. If he dies after the 'Iddah then she does not inherit. The ruling of Talaq Mughallazh is the same as Bain in this. The jurists call this Mas-alatul Fazz [jumping] because the husband hastens the divorce to disinherit her. She remains entitled to inheritance during the 'Iddah. The 'Iddah will be deemed the longer of the two periods, as will be discussed in the chapter on 'Iddah InshaAllaah.

Sundry Masail

Question 1614) How many divorces can a freeman and a slave give?

A: According to the Ahnaf this is determined according to the wife, not the husband. If the woman is a slave, then she can get two divorces and her 'Iddah is two menstruations, whether her husband is a slave or a freeman. A freewoman can be divorced thrice, whether her husband is free or a slave. In summary, a slave-girl's husband does not own more than two divorces. If he divorces her twice then he has used up what he got. Two regarding her is like three regarding a freewoman and the divorce is Mughallazh.

Question 1615) Can a man and woman be separated by something besides divorce?

A: If a man comes to own his wife or a share of her; or if she comes to own her husband or a share of him then there are separated.

Khul'[Wife paying for her divorce]

Question 1616) Is there another way for a woman to leave the marriage besides divorce?

A: If there couple are at ends and fear that they will not be able to adhere to Allaah's limits then there is no harm for the wife to ransom herself with money to free herself from her husband. If she says, "I cast you off [Khul'] for such-and-such amount," and he accepts, a Bain divorce takes place and she is liable to pay the amount. This is called *Khul'*.

A: If the breakdown in the marriage was from his side then it is Makruh for him to take the money. If it is from her side then it is Makruh for him to take more than what he gave her. In both cases he may legally take the money and the divorce is Bain.

Question 1617) He divorced her in exchange for money and she agreed. Neither used the word *Khul'*. Is the divorce valid?

A: Yes, the divorce falls and she is liable to pay the money. The divorce is Bain.

Question 1618) A Muslim woman offered wine/pig for *Khul'*. The husband accepts. What is the ruling?

A: She will not pay anything. The separation will be Bain.

Question 1619) He divorced her for wine/pig without mention of *Khul'*. Does the divorce occur?

A: Yes, the divorce occurs as Raj'i²³ and the compensation is void.

Question 1620) What kind of wealth kind the wife pay as *Khul'*?

A: Whatever is a valid Mahr can be offered as a valid *Khul'*.

Question 1621) She says, "Grant me *Khul'* in exchange for whatever is in my hand." He accepts and learns there is nothing in her hand. What does she owe?

²³ Because in the previous mas-alah the factor was the *Khul'* and here it is an explicit divorce.

A: She owes nothing. The divorce is Bain.

Question 1622) She says, "Grant me *Khul'* in exchange for whatever wealth is in my hand." He accepts and learns there is nothing in her hand. What does she owe?

A: She must return her Mahr if she took possession of it. The divorce is Bain.

Question 1623) She says, "Grant me *Khul'* in exchange for whatever Darahim is in my hand." He accepts and learns there is nothing in her hand. What does she owe?

A: She owes three Darahim.²⁴

Question 1624) She says, "Divorce me thrice in exchange for 1000." He divorces her once. What does she owe?

A: She owes a third of 1000. [Divorce is Bain].

Question 1625) She says, "Divorce me thrice upon 1000." He divorces her once. What does she owe?

A: According to Imaam Abu Hanifah رحمته الله she does not owe anything and he retains the right to take her back. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله she owes a third of 1000 as above.

Question 1626) He says to her, "Divorce yourself thrice in exchange for/ upon 1000." She divorced herself once. What is the ruling?

A: No divorce occurs and she owes nothing.

Question 1627) The couple entered into a *Khul'*. Each had rights remaining against the other, or at least one had a claim against the other. What is the status of these rights?

²⁴ Because she used the plural term and the smallest plural [in 'Arabic] is 3.

A: According to Imaam Abu Hanifah رحمته الله the Khul' cancels all rights related to the marriage. As for rights not related to the marriage e.g. one took a loan from the other and then they had Khul', then fulfilment remains Wajib. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the Khul' does not cancel any rights except what they stipulate.

There is another scenario for forfeiting of rights called *Mubara-ah* or mutual absolving. According to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله the right of each with regards marriage is forgiven. According to Imaam Muhammed رحمته الله *Mubara-ah* and *Khul'* are the same, the rights do not fall away except that which they stipulate.

Raj'ah [Taking back]

Question 1628) You have mentioned that if a man gives a woman one or two Raj'i divorce he may take her back during the 'Iddah. Is the consent of the woman required for this?

A: No, he may take her back whether she is pleased or not.

Question 1629) How does he take her back?

A: He may take her verbally back by saying, "I am taking you back/ I am taking my wife back." If he has intercourse with her, kisses her, touches her with lust, or looks at inner vagina with lust then these are counted as taking her back by action.

Question 1630) Is it Wajib for him to establish witnesses to him taking her back?

A: It is not Wajib but Mustahabb for him to establish two witnesses in order for him to take her back. If he does not then his Raj'ah is still valid.

Question 1631) He gave her a Raj'i divorce. After the 'Iddah he claims, "I took you back during the 'Iddah." What is the ruling?

A: If she confirms him then it is Raj'ah. If she denies him then her word will be accepted under oath according to Imaam Abu Hanifah رحمته الله.

Question 1632) He says, "I take you back." She replies, "The 'Iddah is finished." Is the Raj'ah valid?

A: According to Imaam Abu Hanifah رحمته الله it is not. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is valid.

Question 1633) A man marries a slave-girl and divorces her Raj'i. After the 'Iddah he says to her, "I took you back during the 'Iddah." Her owner verifies him but she denies it. Whose word will be taken?

A: According to Imaam Abu Hanifah رحمته الله her word will be taken.²⁵

Question 1634) The bleeding of the third menstruation of the divorcee has stopped. Does this mean that she cannot be taken back?

A: If it stopped upon ten days she cannot be taken back and the 'Iddah is finished even if she did not make Ghushl yet. If it stopped before ten days then she can be taken back until she makes Ghushl, or a Waqt of Salah passes over her, or she makes Tayammum and prays Salah. This is according to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله. According to Imaam Muhammed رحمته الله if she makes Tayammum he cannot take her back even if she has not prayed.

Question 1635) She made Ghushl but forgot an organ or the water did not reach there. Can he take her back?

A: If it is a complete organ or more then he can take her back. If less than a complete organ then he may not.

²⁵ According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله the word of the husband and owner will be taken. [al-Hidayah]

NOTE: It is Mustahab for the husband of the divorcee not to enter her presence until he asks her permission or lets her hear his approaching footsteps. It is Mustahab for her to adorn herself to attract him. If he then has sex with her he has not sinned because Raj'i divorce does not prohibit sex. He thus takes her back through that action, as we have already mentioned.

Remarrying a woman given Bain or three divorces

Question 1636) If a man gives his wife a Bain divorce less than three, may he remarry her?

A: He may remarry her during and after her 'Iddah. Another man can only marry her after the 'Iddah.

Question 1637) A man divorces his freewoman wife thrice, whether according to Sunnah or Bid'ah. Can he remarry her?

A: Three divorces for a freewoman or two for a slave-girl is called Mughallazh Divorce. The husband who divorced her may not remarry her until she marries another man in a proper marriage after her 'Iddah. The second husband must have sex with her; and then divorce her or die. After this "Iddah she may remarry the first husband.

Question 1638) What do you mean "proper marriage"? What effect does this benefit have?

A: It means it must be a legally effective marriage, not Fasid. If he has sex with her after a Fasid marriage then the first husband still does not become permissible for her, because his marriage has no effect in Shari'ah.

Question 1639) A slave-girl was given two divorces. Her divorce is thus Mughallazh. Her owner then has sex with her by right of ownership. Does that sex make it permissible for her husband to remarry her?

A: No, the ayah of the Quraan stipulates that she marry another husband. The owner is not her husband.

Question 1640) The ayah does not mention sex with the second husband. Why have you made it a condition?

A: It is established from Rasulullaah ﷺ.²⁶

Question 1641) A woman was given Mughallazh divorce. After her 'Iddah a man married his near pubescent [Murahiq] son to her. The boy has sex with her. Does this sex make her permissible for the first husband?

A: Yes, a Murahiq is like an adult in the case of making her permissible for the first husband.

Question 1642) A man marries a woman who was divorced Mughallazh in order to make her Halal for the first husband. Is the marriage valid? Can she marry the first husband after sex with the second husband?

A: Marriage specifically on condition of making her Halal for the first husband is Makruh Tahrim.i. Nevertheless if all the requirements for marriage are met the marriage is valid. If he then divorces her after sex or dies after sex, then she is permissible for the first husband.

Question 1643) A man divorces a freewoman once or twice. After her 'Iddah she marries a second man. She later remarries the first husband. How many divorces can the first husband give her?

A: According to Imaam Abu Hanifah رحمه الله and Imaam Abu Yusuf رحمه الله her can divorce him thrice, the second husband having

²⁶ Hadhrat 'Aishah radiyallahu 'anha narrates: The wife of Rufa'ah al-Qurazhi came to Rasulullaah ﷺ and said, "I was with Rufa'ah. He divorced me irrevocably and I married 'Abdurrahman bin az-Zabir. He does not have any power except like that of the fringe of a cloth." He said, "Do you want to go back to Rufa'ah?" "Yes," she said. "Not until you taste his honey and he tastes your honey," he replied. [Muslim and al-Bukhari]

restored them to him. According to Imaam Muhammed رحمته الله he does not restore it.

Question 1644) A man divorces his wife thrice. She marries another man and returns to the first in accordance to all requirements of Shari'ah. How many times can the first husband divorce her?

A: He can divorce her thrice according to all three Imams.

Question 1645) A man divorces his wife thrice. She says, "I completed my 'Iddah and married another man who had sex with me. He divorced me and I completed that 'Iddah." Can the first husband marry her?

A: He may if he thinks that she is most probably speaking the truth and that the time frame allows for her words to be true.

Kitabul 'Iddah

Question 1646) What is 'Iddah? Why is it called that?

A: If a man divorces his wife a Raj'i/Bain/Mughallazh divorce; or they are separated without divorce; or he dies; then she is not allowed to marry another man until she has spent a specified time. The time differs according to the woman on months or menstrual periods. This waiting period is called 'Iddah [counting] because the woman counts her months or menstruations.

Question 1647) Explain the details of the above.

A: It is as follows:

1. If the divorcee is a freewoman who menstruates then the 'Iddah is three complete menstruations.
2. If she does not menstruate, whether due to small age or old age, then her 'Iddah is three months.
3. If a freewoman's husband dies and she is not pregnant, then the 'Iddah is four months and ten days.

4. If she is pregnant when divorced or her husband dies, then her 'Iddah is until she gives birth.

Question 1648) You mentioned a freewoman. Is there a difference in the ruling of a slave?

A: Yes, the 'Iddah of a slave-girl who menstruates is two menstruations. If she does not menstruate, whether due to small age or old age, then her 'Iddah is one-and-a-half months. When her husband dies her 'Iddah is two months and five days. If she is pregnant then her 'Iddah is until she gives birth, whether she is divorced or whether her husband has died.

Question 1649) If a man divorces his wife whiles she is menstruating, does that menstrual period count as one of the three periods?

A: No, after that period three complete menstrual periods will be counted.

Question 1650) A man divorces his wife on his death-bed. He then dies during her 'Iddah. Which 'Iddah will she have to spend?

A: According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله she will spend whichever of the two is longer.²⁷

Question 1651) What is meant by whichever is longer?

A: If the Iddah of death is longer she must spend it; if the Iddah of divorce is longer she must spend it.

Question 1652) How does that benefit her?

A: She is still entitled to inherit from him as long as she is in his Iddah. Thus prolonging the Iddah benefits her.

²⁷ According to Imaam Abu Yusuf رحمته الله if it is Bain or three then she will spend three menstruations. If it is Raj'i then it is unanimous that she will spend the Iddah of death. [al-Hidayah]

Question 1653) A man divorced his wife a Raj'i divorce. The owner frees her before the end of her *Iddah*. Which *Iddah* will she spend?

A: The *Iddah* of a freewoman.²⁸

Question 1654) A slave-girl is freed whilst spending the *Iddah* of Balh or Mughallazh or death. How will she fulfil it now?

A: She will continue the *Iddah* of a slave and will not extend it to the *Iddah* of a freewoman.²⁹

Question 1655) A woman no longer has menstruation. Her husband divorces her and she spends her *Iddah* according to months. She then sees menstrual blood. What should she do?

A: She must begin anew according to menses. What has passed of her *Iddah* is void.

Question 1656) A man married a woman in a Fasid marriage³⁰ and had sex with her. The Judge then separates them or the husband dies. What *Iddah* does she spend?

A: She will spend three menses if she is a woman who menstruates, otherwise three months. If she is pregnant then until she gives birth.

Question 1657) A man mistook a woman and had sex with her. He dies or the Judge separates them. Is there an *Iddah*?

A: Yes, three menstruations.

²⁸ She will not begin anew, but will continue her *Iddah* as a freewoman. (ash-Shami:605/2)

²⁹ The difference is that in Raj'i the marriage is not yet terminated.

³⁰ There were no witnesses/ the woman is married and the second husband does not know. If he did know and had sex then there is no *Iddah* because it was adultery. Also if a man went to the wrong woman on their wedding night and thought that the woman he is having sex with is his wife, if he claims that he thought so.

Question 1658) An Ummul Walad slave-girl's owner died or freed her. Is there an *Iddah*?

A: Yes, three menstruations.

Question 1659) A boy's guardian married him to a woman. He dies and she is pregnant. What *Iddah* does she spend?

A: If she is pregnant at the time of his death then the *Iddah* is until she gives birth. If after his death then the *Iddah* is four months and ten days.

Question 1660) When does the *Iddah* begin?

A: The *Iddah* of divorce begins upon the divorce. The *Iddah* of death begins upon his death. The *Iddah* when they are forcefully separated begins upon the separation or the commitment of the man who had sex with her not to have sex with her.

Question 1661) A woman's husband gave her divorce or died. She did not know of the divorce or death until the time of the *Iddah* had already passed. What is the ruling?

A: Her *Iddah* is complete with the passage of the required time. She need not start a second *Iddah* upon receiving the news.

Question 1662) A woman was spending her *Iddah* of divorce when a man mistook her and had sex with her. Does her *Iddah* begin anew?

A: She will not begin anew, but she is obliged to spend a second *Iddah*. The two *Iddah* will overlap each other.

Question 1663) How do they overlap?

A: Whatever blood she sees will be of both *Iddah* together. When the first *Iddah* finishes and the second is not complete then she will complete what remains of the second.³¹

³¹ If he had sex with her after the menses of the first period then she must still complete two menses of the first *Iddah*. These two will be counted towards

Question 1664) A man gave his wife a Bain divorce. He then marries her during her *Iddah*. He again divorces her without having sex. Does she begin the *Iddah* anew?

A: According to Imaam Abu Hanifah رحمته الله yes. According to Imaam Muhammed رحمته الله completing the first *Iddah* is sufficient.

Question 1665) Does he owe her Mahr?

A: According to Imaam Abu Hanifah رحمته الله he owes her a full Mahr. According to Imaam Muhammed رحمته الله he owes her a half Mahr.

Iddah

Question 1666) Is there any other obligation upon a woman who is divorced or whose husband died, besides *Iddah*?

A: An adult Muslim woman irrevocably divorced or whose husband has died must observe *Iddah* during her *Iddah*.

Question 1667) What is *Iddah*?

A: It means that she has to leave fragrance and adornment. She may not apply Henna. She may not wear clothing dyed with fragrance such as saffron. She may not apply oil or antimony except for a valid need.

Question 1668) You stipulated an adult Muslim. Is the ruling different for a girl or Kafirah?

A: Yes, there is no *Iddah* on a minor girl or Kafirah.

Question 1669) What is the status of *Iddah* in regard a slave-girl?

the second *Iddah* as well. When she completes the next menses then the second *Iddah* is complete as well.

A: - If the slave-girl is an adult Muslim then she must observe *Iddah* as well if she was irrevocably divorced or her husband died. If her owner dies and she was his Ummul Walad, then there is no *Iddah* upon her.

Ruling of leaving the house

Question 1670) Are there any other regulations for a divorcee and a woman whose husband has died besides *Iddah*?

A: A divorcee, whether revocable or irrevocable, may not leave the house, day or night. A widow may leave in the day and part of the night but may not spend the night in another house.³²

Question 1671) Where does the divorcee and widow spend their *Iddah*?

A: They will spend it in the house given to them for living at the time of the divorce or husband's death.

Question 1672) A widow's inherited share of the house of the deceased suffices her. Can she leave the house to stay with her parents or somewhere else?

A: She may not without a valid reason.

Question 1673) If her part of the house is insufficient and the other heirs leave her out of their share, may she move?

A: Yes.

³² Because she receives no allowance from her husband unlike the divorcees. [al-Hidayah]

Sundry Masail

Question 1674) Can a man propose to a widow while she is in *Iddah*?

A: He may not do it explicitly but may hint to her.³³

Question 1675) A Zimmi divorced his Zimmi wife or he died. What is the ruling of her *Iddah*?

A: If she is not pregnant then there is no *Iddah*. If she is pregnant then there is *Iddah*.

Question 1676) A Muslim divorced his Jewish/Christian wife or he died. Does she spend *Iddah*?

A: Yes, she spends *Iddah*, whether pregnant or not. Nobody may marry her during her *Iddah*.

Question 1677) A woman became pregnant through Zina. She now wants to marry. Can she?

A: If she marries the marriage will be valid, but her husband may not have intercourse with her until she gives birth. However, if she marries the man who committed the Zina with her and from whose sperm the foetus is created then they may have sex after marriage.

Establishing lineage

Question 1678) How is lineage of children established to their fathers?

A: A man marries a woman. After six lunar months or more she gives birth. The child's lineage is attributed to him if he consents or if

³³ In the explanation of Ibn 'Abbas رضي الله عنه he may for example say, "A wish to marry a woman who is like this and that." [al-Bahr ar-Raiq (165/4)]

he remains silent. If the baby is born sooner than six months from the day of the marriage, then the baby is not attributed to him.

Question 1679) It is possible that the woman committed Zina and the foetus is from that act. How will its lineage be established to the husband?

A: The child will be attributed to the husband and no attention should be paid to such possibilities. Even if she really did commit Zina the lineage will still be established to the husband. Rasulullah ﷺ said, "The child is for the [husband of the] bed and stones are for the adulterer." [al-Bukhari]. If however the husband denies the child, then *Li'an* will take place. Its meaning and method will be explained in the next chapter *InshaAllaah*.

Question 1680) A woman has given birth and her husband denies the birth. How will the birth be established?

A: The Arsh (testification) of one woman will establish that the birth took place.

Question 1681) You have mentioned the law in regard establishing lineage to a husband she is married to. What about a husband who has divorced her?

A: There are details in this matter as follows:

1. A Raj'i divorcee will have her child attributed to the husband if she gave birth after two years or more, as long as she says her *Iddah* has not terminated. In the second scenario it will be said that he had sex with her during the *Iddah* and hence took her back.
2. If the Raj'i divorcee gives birth in less than two years the lineage is established from the husband and she becomes Bain.
3. An irrevocable divorcee's child is attributed to the husband if she gave birth within two years. If she gave birth two years from the day of separation or more the lineage will not be attributed to him unless he claims it.
4. The child of a widow is attributed to the husband if born within two years of the day of death.

5. A woman admits that her *Iddah* is complete. If she then gives birth within six months the child is the husband's. If after six months then the lineage is not established.

Question 1682) Are there other conditions for establishing the lineage of the child of a woman in *Iddah* besides what you have mentioned?

A: According to Imaam Abu Hanifah رحمته الله it is a condition that two men or a man and two women testify that she gave birth. If however her pregnancy was apparent, or the husband admits to it, then the lineage is established without Arsh.

According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the Arsh (testification) of one woman establishes the lineage in all scenarios.

NOTE: The maximum pregnancy period is two years and the minimum is six months.

Kitabul Li'an

Question 1683) You mentioned in the previous chapter that if the husband denies the child to whom his wife gave birth to, then *Li'an* becomes compulsory upon him. We wish to know what is *Li'an* and how is it conducted?

A: If a man accuses [Qazaf] his wife of Zina, and both of them are legally qualified to testify, and the woman is such whose slanderer will be inflicted with the penal punishment [Hadd]; or he denies the lineage of her child; and the woman demands her rights when slandered; then he will have to undergo *Li'an*. If he refuses to then the judge will detain him until he either commences the *Li'an* or he belies his statement in which case the punishment of slander will be inflicted upon him.

The procedure of *Li'an* is that the husband presents himself before the judge and will take an oath four times. In each he will say, "I testify by

Allaah that I am certainly of the true ones when I accuse this woman of adultery." At the fifth time he will state that may the Allaah's curse definitely be upon him if he is of the liars in accusing her of adultery. He should indicate to her in all this. The woman will then testify four times, saying in each Arsh (testification), "I testify by Allaah that he is certainly of the liars in accusing me of adultery." The fifth time she will say that may Allaah's anger be upon her if he is of the true ones in accusing her of adultery.

Question 1684) A woman institutes a claim of slander and the judge orders *Li'an*. The husband is prepared to undergo it, but she now refuses. What will the judge do?

A: *Li'an* is Wajib upon her if the husband is prepared to do it. If she refuses, the judge will detain her until she performs the *Li'an* or verifies her husband's accusation.³⁴

Question 1685) Why have you stipulated that the couple be people who can testify and that the woman be such whose slanderer is punished?

A: If the husband is a slave, or Kafir³⁵, or has been punished for slander before; and he accuses his wife of adultery, then he will be punished for slander without resorting to *Li'an*.

If the husband is a man who can testify but she is a slave, Kafir, punished for slander, or a woman whose slanderer is not punished³⁶, then there is neither Hadd upon him nor *Li'an*.³⁷

³⁴ In which case he will not be punished for slander, nor will she be punished for adultery simply for verifying the husband. [ad-Durr al-Mukhtar]

³⁵ She became Muslim and he accused her of adultery before he was presented with Islam [al-Bahr (125/4)]

³⁶ i.e. she must be a chaste woman.

³⁷ No Hadd but because he has blemished her so he will be punished otherwise by *Ta'zir*.

Question 1686) The Judge ordered them to commence *Li'an* which they did. Does their marital relation still exist? Is the child's lineage established to the husband who performed *Li'an*?

A: When they perform *Li'an* the judge separates them. According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله the separation is Bain. According to Imaam Abu Yusuf رحمته الله the separation permanently makes them Haram for each other. If the *Li'an* was due to a denying a child, then the judge cancels its lineage to the man who performed the *Li'an* and joins it to its mother.

Question 1687) After the *Li'an* the man recants his accusation and accepts that he was false. What is the ruling?

A: The judge will inflict the Hadd upon him.

Question 1688) Can he now marry her a second time?

A: He can remarry her after admitting that he was false.

Question 1689) A man slanders a woman who is not his wife and is inflicted with the Hadd. Can they marry each other?

A: Yes.

Question 1690) A woman fornicated and was inflicted with the Hadd. A man then makes Qazaf against her. Can he then marry her?

A: Yes.

Question 1691) A man slanders his minor/insane wife. What is the status of *Li'an* between them?

A: There will be no *Li'an* nor will he be inflicted with the Hadd.

Question 1692) And if the husband slanders her and she is minor/insane?

A: There will be no *Li'an*.³⁸

Question 1693) A mute accuses his wife. Will the judge decree *Li'an* between them?

A: There will be no *Li'an*.

Question 1694) If the husband says, "This foetus is not mine," will *Li'an* commence?

A: There is no *Li'an* in this case.³⁹

Question 1695) If he says, "You committed Zina and this foetus is not mine," what effect do these words have?

A: They will perform *Li'an* but the judge will not negate the foetus from him.⁴⁰

Question 1696) When is the man's negation of the wife's child in effect?

A: When he negates immediately after the birth, or in the condition when congratulations are accepted on the birth, or when the goods for the birth are being bought; then his negation has an effect and they will perform *Li'an*. If he delays negating beyond that time then his negation of the child's lineage will not be accepted. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and to Imaam Muhammed رحمته الله he can negate the lineage throughout the *Nifas* period.

³⁸ Because he is not a person who can testify.

³⁹ Because there is no certainty that it will remain a slander due to the possibility that it is only a swelling of the stomach. If his allegation firmly remains such as when she gives birth in less than six months then it is as he said, "If you are pregnant then it is not mine," and slander is not established on conditions. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله if she gives birth in less than six months then *Li'an* will be conducted.

⁴⁰ Because there is no ruling against him until the birth. [ad-Durr al-Mukhtar]

Question 1697) A woman gives birth to twins. The husband negates one and accepts the other. What is the ruling of *Li'an* and establishment of lineage?

A: The lineage of both will be established, whichever of the two he negated. If he negated the first one only then the Hadd of slander will be inflicted upon him. If he negated the second one only then *Li'an* will commence.

Ila

Question 1698) What is *Ila* linguistically and in the terminology of Fiqh?

A: It is *ala* on the scale of *if'al*, meaning to take an oath. Technically it means when a man vows not to approach his wife.

Question 1699) What is the status of *Ila* in the Shari'ah?

A: There are various scenarios which are as follows:

If the man says to his wife, "By Allaah, I shall not approach you for four months," then he is *muli* [commits *Ila*]. If he has sex with her within four months then he has broken his vow. He is liable to pay Kaffarah for breaking his vow and the *Ila* is terminated. The meaning of the termination is that if he approaches her after that, he is not liable a second time. This approaching her is called *Fay* which means terminating the oath. If he does not approach her until four months pass she becomes *Bain* with one divorce and the oath is terminated.⁴¹

If he says, "By Allaah I shall not approach you/ By Allaah I shall never approach you," and then approaches her within four months he has violated his vow and must pay Kaffarah. If he does not approach her in

⁴¹ Based on al-Baqarah:227, "For those who make *Ila* with their wives is a waiting of four months. If they then make *Fay* then Allah is Most Forgiving Most Merciful. And if they resolve upon divorce then Allah is All-Hearing All-Knowing."

until the four months are complete she is divorced one *Bain*. However, in this case the oath remains. Hence if he remarries her the *Ila* is reinstated. If he then has sex with her in the four months he must pay Kaffarah or else another divorce falls. If he then marries her a third time the *Ila* is again reinstated. If they have sex within four months he must pay the Kaffarah or else a third divorce falls at the end of the four months. If he then marries her again after she marries another man the *Ila* is not reinstated but the oath remains. Thus he will pay Kaffarah if they have sex.⁴²

Question 1700) A man pronounced *Ila* against a divorcee. Is the *Ila* valid?

A: If she is a revocable divorcee then it is *Ila*, but not if she is *Bain* [irrevocable].

Question 1701) What is the ruling if he vowed for less than four months?

A: There is no *Ila* if he vowed for less than four months. This means that if they have sex within the vowed period then he must pay Kaffarah. If he does not, even for four months or more, then she is not divorced.

Question 1702) What is the period of *Ila* if slave-girl's husband pronounces it on her?

A: *Ila* for her is two months. If her husband does not have sex with her in that period then she is divorced one *Bain*.

Question 1703) If the husband regrets making the *Ila* and wishes to make *Fay* i.e. have sex with her within the four months as cancellation of the *Ila*. However, he is ill and unable to have sex; or the wife is sick or so young that she cannot have sex; or they are so far away from each other that they cannot meet in the *Ila* period. How then can he make *Fay*?

⁴² The *Ila* ends with the third divorce but the oath remains.

A: In such circumstances he will make *Fay* by verbally saying, "I have made *Fay* to her." In that way the *Ila* is terminated.

Question 1704) He made a verbal *Fay* but the excuse was resolved within the *Ila* period. What is the status of his *Fay*?

A: The verbal *Fay* is void. He must make *Fay* by sex.

Zhihar

Question 1705) What is *Zhihar* linguistically and in Shari'ah?

A: Linguistically is derived from *Zhahr* [back]. If a man says to his wife, "You are to me as my mother's back," then he has committed *Zhihar* in Shari'ah, to which there are certain laws attached.

Question 1706) Explain these laws.

A: When a man pronounces *Zhihar* against his wife she becomes Haram for him. He may not have sex with her, nor touch her, nor kiss her, until he pays the Kaffarah of *Zhihar*. If he does have sex before paying, then he should seek Allaah's forgiveness and not do it a second time until he pays the Kaffarah. He is still liable for a single Kaffarah, nothing in addition.

Question 1707) Do the very words of *Zhihar* make Kaffarah Wajib or is there something else?

A: Yes, he must pay when he is resolved to have sex with her again. Allaah says, "Those who pronounce *Zhihar* against their wives then wish to retract their words, must set free a slave before they touch each other..."

Question 1708) What is the ruling if he compares her to a body part besides the back?

A: It will also be *Zhihar* if he says, "You are as to me as my mother's stomach/ thigh/ vagina."

Question 1709) And if he says, "You head/ vagina/ neck/ half/ third are to me as my mother's back,"?

A: That will also be *Zhihar*.

Question 1710) Is *Zhihar* specific to a comparison with a mother or is it general to any woman one cannot marry?

A: It is general and covers all such women whom one cannot ever marry e.g. sister, paternal aunt, foster-mother etc. If he says, "You are to me as my sister's back/ thigh/ vagina," then it is *Zhihar*.

Question 1711) What is the ruling if he says to his wife, "You are to me like my mother/ similar to my mother."?

A: He will be asked what he intended. If he says, "I meant to honour her," then it is as he says. If he says, "I intended *Zhihar*," then it is *Zhihar*. If he says, "I intended divorce," then it is an irrevocable divorce. If he had no intention then it is nothing.

Question 1712) A man with several wives says to them, "You are as to me as my mother's back." What is the ruling?

A: He has made *Zhihar* with each of them. A separate Kaffarah would have to be paid for each.

Question 1713) What is the Kaffarah of *Zhihar*?

A: Allaah ﷻ has explained it in the beginning of Suratul Mujadalah. It is to free a slave. If he cannot then he should fast two months consecutively. If he cannot, then he must feed 60 Miskin. All that must be done before touching her.

Freeing a slave as Kaffarah of Zhihar

Question 1714) A man wishes to free a slave as Kaffarah of *Zhihar*. What kind *Zhihar*? Of slave will suffice?

A: He may free a slave, be it Muslim or Kafir; male or female; minor or adult. The slave may not be blind or short of his hands; or legs; or one hand and one leg from the same side; or with both thumbs lost. A hand and leg cut from opposite sides is not an obstacle.

Question 1715) Can he free a deaf slave?

A: Yes.

Question 1716) Will his Kaffarah be made if he sets free an insane slave with no sense?

A: No.

Question 1717) And if he frees a Mudabbar, or Ummul Walad, or a Mukatab who had already made a partial payment?

A: The Kaffarah is not made.

Question 1718) And if he freed a Mukatab who did not pay anything?

A: It is allowed.

Question 1719) He bought his father or his son and intended thereby that they would be free and his Kaffarah paid. Does that suffice his Kaffarah?

A: Yes.

Question 1720) A man and his partner own a slave. He frees his half as Kaffarah and accepts liability for the partner's half. The partner then sets his half free. Has the Kaffarah been fulfilled?

A: According to Imaam Abu Hanifah رحمته الله it is not fulfilled. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله if the one setting him free is well-off then it is fulfilled, if he is poor then it is not.

Question 1721) If a man sets half his slave free as Kaffarah of Zhihar and later sets the other half free, is the Kaffarah fulfilled?

A: According to Imaam Abu Hanifah رحمته الله it is fulfilled on condition that he does not have sex with the wife against whom he pronounced the Zhihar in between the period of the two manumissions.⁴³

Fasting

Question 1722) You have mentioned that if the man cannot free a slave as Kaffarah of Zhihar he may fast two months consecutively. Is his Kaffarah valid if he fasts Sha'ban and Ramadan?

A: It is not valid. The fast of Ramadan is Fard upon him due him being a Muslim, not because of the Zhihar. Thus the fast of Ramadan cannot be included in the Kaffarah.

Question 1723) If he fasts Shawwal and Zul Qa'dah, or Zul Qa'dah and Zul Hijjah, is his Kaffarah acceptable?

A: No, because fasting on the Day of Fitr and Nahr and the Days of Tashriq are forbidden. Fasting those days will not fulfil the Wajib requirement.

Question 1724) What is the ruling if he has sex during the two months of Kaffarah with the wife upon whom he pronounced Zhihar?

A: If he consciously has sex in the night or forgetfully in the day⁴⁴ then he begins anew according to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Yusuf رحمته الله he need not begin anew.

Question 1725) What is the ruling if he failed to fast a day during the two months, whether with or without an excuse?

A: He has to begin anew because he missed the condition of consecutiveness.

⁴³ Because he accepts partial manumission.

⁴⁴ If he had sex deliberately in the day then it is unanimously agreed that he will begin anew.

Feeding the poor

Question 1726) You mentioned that if he cannot fast two months consecutively then he must feed sixty poor. How is this feeding done?

A: He must feed each poor person a half Sa' of wheat, or a Sa' of dates or barley or the price of these. If he feeds them lunch and supper until they are full,⁴⁵ then it suffices for them whether they ate a little or a lot.

Question 1727) What is the ruling if he fed one poor person for sixty days?

A: It suffices as his Kaffarah.

Question 1728) He gave a single poor person 30 Sa' of wheat or 120 Sa' of barley in a single day. Is his Kaffarah fulfilled?

A: Only the first day's Kaffarah is fulfilled. He must feed another 59 poor people.

Question 1729) He was giving a poor man a half Sa' of wheat each day. He approached the wife upon whom he had pronounced the *Zhihar* before the completion of feeding 60 poor. Must he begin anew?

A: No, the text of the Quraan does not stipulate such a condition in reference to the feeding.⁴⁶

⁴⁵ It is not valid if there is amongst them those who were full before the meal, or a small child not close to puberty.

⁴⁶ The ayah states, "...he who is not able should feed 60 poor," and does not add onto the condition of feeding by saying, "...before they touch each other..." as in the cases of freeing a slave and fasting.

Sundry Masail

1. If a slave pronounces *Zhihar* on his wife, his only recourse to Kaffarah is fasting, because he does not own anything. Even if his owner frees a slave on his behalf, or feeds 60 poor on his behalf then it will not validate as his Kaffarah.
2. A man is liable for two Kaffahs of *Zhihar*. He set two slaves free but did make a specific intention which is for which. Both his Kaffarahs are fulfilled.
3. Similarly if he is liable for two Kaffarah and he fasted 4 months or fed 120 poor, and did not specify, then both Kaffarah are fulfilled.
4. If he only freed one slave for two Kaffarah, or only fasted 2 months, he may apply that as Kaffarah for whichever one he wishes.

Kitabun Nafaqat [Maintenance]

Question 1730) Whom is it Wajib to spend maintenance on?

A: It is Wajib to spend on one's wives, children, divorcee, parents and blood relatives.

Maintenance of wives

Question 1731) Explain the Masail of maintenance of wives.

A: They are as follows:

1. It is Wajib for a man to maintain his wife, be she Muslim, Christian or Jew; when she has surrendered herself in his home. He is also obligated to feed and clothe her. Both of their conditions are taken into account for this, whether the husband is rich or poor.
2. If she is disobedient and does not surrender herself to his home, then he is not obligated to maintain her until she returns home.
3. If she refuses to give herself over to him until he pays her Mahr, then she is still entitled to maintenance.
4. If the wife is so small that she cannot be sexually enjoyed, then she is not entitled to maintenance even if she hands herself to him.

5. She is an adult and hands herself to him. He is a minor, incapable of sex. She will still receive maintenance from his wealth.
6. If a woman is detained because of debts or is forcibly kidnapped, then she is not entitled to maintenance.
7. If she journeys for Hajj with someone besides her husband then she is not entitled to maintenance.⁴⁷
8. If she is ill in the husband's home, then he must maintain her.
9. A man marries a slave-girl. Her owner lets her stay with him. He must maintain her.
10. A slave marries a freewoman with his owner's permission. Her maintenance will be a debt against which the slave can be sold; unless the owner pays from his wealth.

Question 1732) A woman had a servant in her father's house before marrying. Is it the duty of the husband to pay for a servant for her?

A: Yes, if he is rich. Also, he is not obligated to hire more than one servant.

Question 1733) A man is unable to pay for his wife's maintenance. Will they be separated?

A: No, she will take credit against him. When he can afford he must pay those debts.

Question 1734) The judge ruled that he must spend on her according to a poor man. He later becomes rich and she claims the maintenance of the rich. Must he fulfil the maintenance of the rich to her?

A: Yes.

Question 1735) For some time he does not spend on her. She then demands the amount she spent on herself. Must he pay it?

A: No, unless the judge had ruled an amount for her, or he compromises on an amount.

⁴⁷ If she travels with him, he must maintain her. He will pay for her food as per when they are at home, not as per travel. He is not responsible for her fees and travel expenses. [al-Bahr ar-Raiq (197/4)]

Question 1736) The court has ordered a maintenance amount for her. Months pass and he does not pay and he dies. What is the status of that outstanding amount?

A: The maintenance is forfeit.

Question 1737) He gave her enough to last her a year. One of them dies before the amount is finished. Will it be claimed from her?

A: According to Imaam Abu Hanifah رحمته الله no. according to Imaam Muhammed رحمته الله her past expenses will be calculated and the remainder is the husband's.

Residence

Question 1738) You have mentioned that the husband must pay for her residence. In what house will he keep her?

A: He must keep her in a separate chamber where none of his family stays, unless she chooses otherwise.

Question 1739) He provided her with accommodation. Her parents, family and children from another husband come to visit. Can he stop them?

A: He can stop them from entering, but he may not stop them from looking at her and speaking to her at any time.

Maintenance and accommodation during 'Iddah

Question 1740) Who must maintain a woman during her 'Idda

A: If a man divorces his wife, whether revocable or irrevocable⁴⁸, he is responsible for her maintenance and accommodation. As for a

⁴⁸ As well as Mughallazh divorce.

widow, there is no maintenance from the husband's estate. She may spend her share of the inheritance.

Question 1741) Does any circumstance arise whereby a divorcee's maintenance is cancelled?

A: If the separation is due to a sin from her side, such as abandoning Islaam or giving herself to her husband's son before the divorce, then she is not entitled to maintenance.

Question 1742) And if she gave herself to her husband's son after divorce?

A: She is still entitled to maintenance.

Maintenance of children

Question 1743) If a couple has a child, whether boy or girl, whose duty is it to maintain the child?

A: The father is responsible for maintaining minor children. Nobody shares that responsibility, just as nobody shares the husband's responsibility in maintaining his wife.

Question 1744) Why have you stipulated "minor"?

A: The father is not responsible for maintaining adult male children because they are able to earn for themselves, unless the adult son is chronically adult, in which case the father is responsible for two-thirds of his maintenance and the mother is responsible for a third. The parents are also responsible for the unmarried daughter in the same proportion. They are only responsible for the adult chronically ill son and adult unmarried daughter if they are Muslims.

Question 1745) Is maintenance of minor children a duty in all circumstances?

A: The parents are responsible to spend on their maintenance if the children do not own their own wealth. If however, they do own wealth in their own right then they should spend on them from the children's wealth.

Question 1746) How can the minor have wealth when he cannot earn?

A: He can have wealth when someone gives him a gift; leaves him a bequest after his death; or the child inherits wealth.

Maintenance of parents

Question 1747) Whose duty is it to maintain the parents?

A: If someone owns wealth he will first spend on himself, whether he is young or old, man or woman. This rule is general and covers parents and others but not wives. The husband is responsible to maintain the wife even if she is rich. If one or both the parents are poor then the children are obligated to maintain them.⁴⁹ Nobody shares the responsibility of the child to support his parents. Just as it is Wajib to maintain the parents, it is also Wajib to maintain grandfathers and grandmothers if they are poor.

Question 1748) The parents of an absent man, spend his wealth which they have in their possession, on themselves. Are they liable to repay it?

A: No.

Question 1749) An absent man had some goods or land which his parents sold to maintain themselves. Can they do that?

A: If they sold the goods because of a need to maintain themselves, then it is permissible according to Imaam Abu Hanifah رحمته الله تعالى. They cannot however sell the land.

⁴⁹ Upon both the male and female children. [al-Bahr ar-Raiq (224/4)]

Question 1750) A man is absent and his parents need him to spend on them. Can the judge rule that they will be spent upon from his wealth?

A: Yes, the judge will rule accordingly.

Question 1751) A stranger is holding the wealth of an absent son. The stranger spent on the son's parents from that wealth. Is he liable to compensate that amount?

A: If spent with the court's permission then he is not liable. If he spent without permission then he is liable.

Question 1752) Is maintenance still a duty when the parties have different religions?

A: It will still be a duty to maintain one's wife, parents, grandfathers, grandmothers, children and grandchildren. Besides these, it is not a duty to spend on relatives of another religion, just as a poor man is not obligated to spend on them.

Question 1753) How can a minor child be of a different religion to his father's?

A: For example, a Christian/Jew marries a woman of his religion. She bears his child and then embraces Islaam while he does not. The child will be a Muslim like its mother. The court will rule that the Kafir father must maintain his Muslim child.

NOTE: If a man admits that he is holding the wealth of an absent man and acknowledges that a certain woman is his wife, the judge will rule that he must spend from it on his wife, minor children and parents. The wife will stand as Kafil for the amount. The court will not rule for maintenance for any besides these people.

Maintenance of Blood Relatives ***[Zawil Arham]***

Question 1754) Is maintenance of for relatives besides parents and children Wajib?

A: Maintenance is Wajib for blood relatives one cannot marry according to their inheritance shares,⁵⁰ when it is a poor minor, or poor adult female, or chronically ill male, or poor blind person.

NOTE: If the court rules that he must maintain children, parents and relatives and sometime passes without him paying then the amount is forfeit unless the court permits them to take incur debt against him.⁵¹

Maintenance of slaves

Question 1755) Is a man obligated to pay for the maintenance of his slave or slave-girl?

A: He must spend on them. If he refuses they may acquire earnings and maintain themselves from it. If they cannot earn then the court will force him to sell them.

Breastfeeding and custody of children

Question 1756) A baby of breastfeeding age has both parents. Whose duty is it to see to the child's breastfeeding?

A: If the mother is willing to breastfeed him then that would be best for the baby. However, she is not obligated to do so. If she refuses then the father must hire someone to breastfeed him on behalf of the mother.

Question 1757) Can the mother not feed him in exchange for payment, just as another woman would be hired to do it?

A: If the nurse is the baby's father's wife or divorcee in 'Iddah who is receiving maintenance then she may not take a fee for feeding

⁵⁰ E.g. he has a grandfather and son of son. The grandfather is responsible for a sixth of his maintenance and the son's son for the rest; because if he dies then they inherit from him in that proportion.

⁵¹ i.e. the passage of time does not absolve him of liability of debts incurred with the court's permission.

her baby; because her maintenance is Wajib upon the father from another aspect. If the divorcee has completed her 'Iddah, she may take a fee for feeding him.

Question 1758) The father hires a nurse, and the mother whose 'Iddah is complete is willing to accept the same fee as the nurse. Who is more entitled to feed the baby?

A: The mother is more entitled to feed her baby.

Question 1759) If the mother demands a fee greater than that of the other nurse, can the father be forced to accede?

A: No.

Question 1760) The couple has separated. Who is more entitled to the children?

A: The mother is most entitled. If there is no mother, then the mother's mother is more entitled than the father's mother. If there is no maternal grandmother then the paternal grandmother is more entitled than the sisters. If there is no paternal grandmother then the sisters are more entitled than the paternal – and maternal aunts. The sister with both parents in common is most entitled, then a sister with only a mother in common, then a sister with only a father in common. Thereafter the maternal aunts are more entitled than the paternal aunts. Then come the paternal aunts. The maternal and paternal aunts are ranked the same way as sisters in the three relevant categories.

Question 1761) Is the right to custody ever lost?

A: Whoever of the above marries loses her right of custody; except for a grandmother whose husband is the grandfather. Similarly the mother's right is not lost when she marries a Mahram of the child e.g. the child's paternal uncle.

Question 1762) The mother does not want custody and there are no other women who can assume custody. What is the ruling?

A: The mother will be forced to take the child.

Question 1763) If there are no women of the child's family to take custody of the child and the men fight over it, who will receive custody?

A: The closest in terms of *Asabiyah* is most entitled.⁵²

Question 1764) For how long are the women entitled to custody?

A: The mother and grandmother are entitled to a boy until he can do the following on his own – eat, drink, dress and *Istinja*. They are entitled to a girl until she menstruates. Women besides the mother and grandmother are entitled to the girl until she reaches an age when she is sexually desirable.

Question 1765) What are the custody rights of a Christian/Jewish woman who bore a child for her Muslim husband?

A: She is entitled to him as long as he does not yet understand the difference in religions and there is no fear yet of him being influenced by disbelief.

Question 1766) What are the custody rights of a slave-girl over her child?

A: A slave-girl and an *Ummul Walad* do not have custody rights before being set free. Once free, they have the same rights as a freewoman.

⁵² First will be the father, then the father's father and ascending thus. Then a full brother, then a brother with a common father. Then the son of the full brother. Then the son of the brother with a common father. And thus all their descendants. Then a full brother of the father. Then a brother of the father who has a father in common. Then cousins, first is the son of a full brother of the father; then the son of a brother of the father who has a father in common. The cousins will not get a girl's custody because they are not Mahram. Also she will not be given to an untrustworthy mother or sinful relatives; nor to the owner who set the slave free; in order to avoid trouble.

Question 1767) A woman is divorced and being most entitled, gets custody over her child. She then intends taking the child away from the city where the child's father is. Can she do that?

A: She may not, unless she takes him to her homeland where his father married her.

Kitabul Mafqud [Missing people]

Question 1768) A man has disappeared from his town and his location is not known; nor if he is living or dead. Who will guard his wealth and other issues?

A: The court will appoint someone to guard his wealth, fulfil his obligations and spend on his wife and minor children from his wealth.

Question 1769) Can the judge separate the missing man and his wife, and thereby permit her to remarry?

A: He may not separate them until 120 years⁵³ have passed since the day he was born. Upon completion of this period the judge will rule that he is legally dead and the wife will spend the 'Iddah of a widow. She may then remarry if she wishes.

Question 1770) How will the inheritance be divided if any of the missing man's heirs died before he was declared dead?

⁵³ This is according to Imaam Abu Hanifah رحمته الله and is the safest. However, the latter Hanafiyah observed the increased temptations and decrease in piety and patience of women, and hence ruled according to the Mazhab of al-Imam Malik رحمته الله. Accordingly the woman will present herself to the judge and provide Shar'i evidence that her husband is missing. The judge will conduct further investigations. If nothing is learnt he will rule that the woman must wait a further 4 years. If in that period no further information is obtained and it is not known whether he is dead or alive then the court will declare him dead. She will spend the 'Iddah of a widow and may thereafter remarry.

A: Only those heirs living at the time of the declaration will inherit.

Question 1771) Does the missing inherit from his relatives who die before he is declared dead?

A: He does not inherit from anyone who dies while he is missing.

Kitabul Istirqaq wal I'taq [Enslavement and Manumission]

Question 1772) How does a freeman/woman become a slave?

A: Jihad will continue until the Day of Resurrection. Thus when the Believers wage Jihad against the Kuffar and capture them, the Amirul Muminin may decide to enslave them. Once he decrees that, they are slaves and will be divided amongst those entitled to booty.

Question 1773) The enemies of Islaam object that enslavement is a violation of humanity.

A: Their objections are mistaken and their words unsophisticated. If Kuffar captives are returned to their lands they will be even harsher against Islaam and the Muslims. They will be even further from the guidance with which the Quraan was revealed. If the ruler should keep them imprisoned then their maintenance will be a burden upon the Public Treasury. That is an expense without any benefit. It is therefore appropriate that he divides them amongst the warriors to serve them. Each slave will earn for his master and eat from his home. The slave will thus not be a complete burden upon the master, but will be like a member of the household. In this way both the master and slave benefit in worldly terms. As far as Din is concerned, the slave will live in a Muslim home and observe their Salah, Fasting, Worship, Remembrance of Allaah and their good character. He will be affected by that and enter Allaah's Din. He will be saved from the punishment of Hell – what a great favour that is upon him. The pages of history are replete with slaves of either sex who embraced Islaam and acquired lofty stages in regards knowledge and pious deeds.

Enslavement is not necessary and the ruler has other options which will be described in Kitabus Siyar InshaAllaah. The Shari'ah greatly encourages manumission of slaves and commands that they be set free as Kaffarah. It also instituted the processed of declaring slaves *Mudabbar* and *Mukatab* as ways of freeing them.

Question 1774) How does a man free his slave?

A: If a sane adult says to his slave/slave-girl, "You are a free person/ you are set free/ you are freed/ you are made free/ I have freed you/ you are manumitted," then the slave is free; whether the owner meant manumission or not, because these words are explicit manumission and do not depend on intention.

Question 1775) If the owner specifies the freedom to certain organs of the slave is the slave free?

A: If he says, "Your neck/face/head/body is free," then the slave is free. Similarly if he says to a slave-girl, "Your vagina is free."⁵⁴

Question 1776) What if he says, "I have no ownership over you"?

A: If he intended manumission then the slave is free, if not then the slave is not free. The same rule applies to any other non-explicit words of manumission, such as, "You have left my ownership/ I have no authority over you."

Question 1777) What if he says, "I have no *Sultan* [power] over you"?

A: The slave will not be freed even if the owner intended it as manumission.

Question 1778) If the owner says, "This is my son,"⁵⁵ and remains firm on his statement or says, "This is my freed-slave," or calls him, "O my freed-slave," is the slave free?

⁵⁴ Because these words symbolise the entire body. [al-Hidayah]

A: Yes, these expressions are treated as explicit declarations of freedom.

Question 1779) And if he says, "O my son/ O my brother/ You are like a freeman."?

A: The slave is not freed.

Question 1780) If the owner says about a slave who cannot be his son, "This is my son," what is the ruling?

A: According to Imaam Abu Hanifah رحمته الله he is freed. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he is not freed.

Question 1781) If the owner says to his slave-girl, "You are divorced," and intends thereby freeing her, is she freed?

A: No.

Question 1782) If he says to his slave, "You are nothing but free," what is the ruling?

A: The slave is free.

Question 1783) What is the ruling if a man is forced to free his slave, or was drunk when he freed the slave?

A: The slave is free.

Question 1784) A man frees a pregnant slave-girl. What is the status of the foetus?

A: Mother and foetus are both free.

Question 1785) What is the ruling if only the foetus is freed?

⁵⁵ Meaning that when it is possible that the slave could be his son. Where not, is discussed next.

A: The foetus and not the mother are free.

Question 1786) Can freedom be attached to possession or other conditions?

A: Yes, thus if he says to someone else's slave, "If I own you, you will be free," then slave will be free if he comes to own him. If he says to his own slave, "If you enter the house you are free," and the slave enters the house then he is free.

Question 1787) Is there a way of manumission without the owner setting the slave free?

A: Yes, if someone acquires a Mahram blood relative, whether by purchase, inheritance or gift, then that relative is free even if the owner had no intention of manumission.

Question 1788) If the owner sets part of the slave free, is the part of the entire slave free?

A: According to Imaam Abu Hanifah رحمته الله the part only is free and the slave will work to earn his complete freedom. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he is entirely free and need to work to complete his freedom.⁵⁶

Question 1789) Two partners share a slave. One frees his share. What is the status of the remaining share?

A: If the freedom-grantor is rich then the partner has a choice, he may either free his share as well, or hold the other liable, or he can demand that the slave earn and pay him his share. If the freedom-grantor is poor, the partner has the same options except that he cannot hold his partner liable. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam

⁵⁶ The principle according to Imaam Abu Hanifah رحمته الله is that the slave can be divided into parts whilst according to them as well as al-Imam ash-Shafi'i رحمته الله it cannot.

Muhammed رحمته الله he can only hold the rich partner liable and if the partner is poor he must demand that the slave pay him.

Question 1790) You have mentioned that if a blood-relative Mahram comes into possession he is automatically free. If two partners buy or inherit a slave who is the son of one of the partners, is the slave free? If so what is the other partner's right?

A: The father's share is freed and he is not liable for his partner's share. The partner can either free his share or make the slave work to compensate him.

Question 1791) Two partners own a slave and each claims that the other freed his share. Both deny that they set their share free. What is the ruling?

A: The slave will be entirely free. According to Imaam Abu Hanifah رحمته الله he will work to repay both partners, whether they are rich or poor. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will only work and compensate a poor partner(s) and will not compensate a rich partner(s).

Question 1792) People free their slaves for Allaah's sake. If someone says, "I free you for Satan's sake/ an idol's sake," is the slave free?

A: Yes.

Sundry Masail

1. If a slave belonging to a Kafir flees from the lands of the Kuffar to us then he is free.
2. If a slave-girl bears the child of her owner, then the offspring is free.
3. Her child from her slave husband belongs to her owner.
4. The offspring of a freewoman from slave is free.

Tadbir

Question 1793) What is Tadbir?

A: It is when the owner says, "When I die then you are free/ You are free after [*dubur*] me/ You are a *Mudabbar*/ I have made *Tadbir* of you."

Question 1794) What is the ruling when he says that?

A: The slave is classified as a *Mudabbar* i.e. he will be freed upon the owner's death. He may not be sold; nor gifted to anyone; nor hired out; nor given to serve anyone else.

Question 1795) If he makes Tadbir of a slave-girl, can he still have sex with her? Can he marry her to another man?

A: Both acts are permissible.

Question 1796) The owner then marries her to another man who fathers her child. What is the child's status?

A: The child is a *Mudabbar* like its mother.

Question 1797) When the owner dies, is the Mudabbar free without any price or must he compensate the heirs?

A: If the third of the estate in which the deceased could make a bequest covers the slave's value then he is free without further liability. If the entire estate consisted of nothing but the slave, then the slave must compensate them for two-thirds of his value. If debts consume the entire value of the estate, then the slave will compensate the creditors for his entire value.

Question 1798) Is the Tadbir valid if the owner attaches a specific description to his freedom, e.g. "If I die in this illness of mine/ in this journey/ of such-and-such a disease,"?

A: The slave is not a *Mudabbar* and may be sold and gifted away. However, if the specified condition is found, he will be freed from the third of the estate.

Istilad

Question 1799) What is Istilad?

A: When an owner impregnates his slave-girl and she gives birth to his child, then he has made *Istilad* with her. The slave-girl is called *Ummul Walad* [child's mother]. This is on condition that he acknowledges the child, in which case its lineage will be attributed to him.

Question 1800) What are the regulations concerning an Ummul Walad?

A: She may not be sold or otherwise transferred into another's possession. The owner may have sex with her, take service from her, hire her out, and get her married. When the owner dies she is freed from the entire estate [i.e. she is not limited to the third only] and is not obligated to compensate the heirs or the creditors. If he had gotten her married and she then bears another child, the child is in the same status as her i.e. it will be free when she gains her freedom.

Question 1801) You have stipulated that the owner must acknowledge the child for Istilad. What happens if he does not?

A: The lineage will not be attributed to him.

Question 1802) He acknowledges a child and then she bears a second child. Is it necessary for him to acknowledge the second as well, or is the first acknowledgement sufficient?

A: The second child's lineage will be attributed to him with need for acknowledgement. If however he specifically denies the child, then the lineage will not be attributed to him.

Question 1803) A man marries a slave-girl. She bears his child and he then comes to own her. Does she become his *Ummul Walad*?

A: Yes, the laws of *Ummul Walad* apply to her.

Question 1804) A man owns a slave-girl. His father has intercourse with her and she bears his child. The father claims the child. Will the child's lineage be attributed to him?

A: It will be attributed to the father who claimed him and she will be his *Ummul Walad*.

Question 1805) When she becomes the *Ummul Walad* of the father who made the claim, does the father have to pay his son who owned her?

A: Yes, the father is liable to pay her price to him.

Question 1806) Does he owe anything else, such as '*Uqr*⁵⁷ or the price of the child?

A: No.

Question 1807) A man owns a slave-girl. His grandfather has intercourse with her and she bears his child. The grandfather claims the child. Will the child's lineage be attributed to him?

A: If the owner's father is dead the lineage will be attributed to the grandfather, but not if he is alive.

Question 1808) A slave-girl owned by two partners bears a child. One of the partners claims the child. Will its lineage be attributed to him?

A: Yes, and the slave becomes his *Ummul Walad*. He must pay his partner half her '*Uqr* and half her price. He is not liable for the price of the child.

⁵⁷ Dowry for having sex by mistake [al-Mughrib]

Question 1809) What is the ruling if both partners claim the child?

A: The child will be attributed to both and she will be the *Ummul Walad* of both. Each will pay half '*Uqr*. They will mutually settle their accounts.

Question 1810) How will the inheritance be distributed if one of these partners or the child dies?

A: The child will inherit from both of them as a full child. Each of them will inherit from the child as one father.

Question 1811) A man made his slave *Mukatab*. The *Mukatab* bought a slave-girl and the *Mukatab's* owner cohabited with her. She then bore his child. What is the child's status? What does the owner owe the *Mukatab*?

A: If the *Mukatab* accepts his word then the lineage is attributed to the owner who is liable for her '*Uqr* and child's price. She does not however become his *Ummul Walad*. If the *Mukatab* does not accept his word then the lineage is not established to him.

Kitabul Mukatab

Question 1812) What is the meaning of the owner making a *Mukatabah* agreement with his slave?

A: It is when the owner says to his slave or slave-girl, "I impose upon you 1000 Dirham (for example) payable to me within a specified period beginning from this date to that date. If you do that then you are free. If you do not then you remain a slave." If the slave accepts that then he becomes a *Mukatab*. This transaction is called *Mukatabah*. The amount which the slave renders to the owner is called *Badalul Kitabah* [exchange for written agreement]. Allaah says, "Those who seek a *Kitab* agreement from amongst your slaves then agree to it if you see good in them." [an-Nur:33]

Question 1813) Can the money be demanded immediately or must it be after a period?

A: It can be immediate, deferred or specified for a date.

Question 1814) Can the owner made *Mukatabah* with a minor slave?

A: Yes, if the minor understands buying and selling.

Question 1815) When the owner makes a *Mukatabah* what laws are applicable?

A: If the agreement is valid, then the slave is free of the master's control but does not leave his ownership. The slave is free to buy, sell and travel.⁵⁸

Question 1816) Can the *Mukatab* marry?

A: Only with his owner's permission.

Question 1817) The *Mukatab* earned money for the *Mukatabah*. Can he give a gift or charity from it?

A: He may only give a small amount.

Question 1818) A *Mukatab* bought a slave-girl and had sex with her. She had his child. What is the status of the child?

A: The child enters the *Mukatabah* and is the same ruling as his father. His earnings are his.

Question 1819) The owner got his slave married to his slave-girl. He then made a *Mukatabah* agreement with both of them. The slave-girl has his child. What is the child's status?

A: He is included in his mother's Kitabah and his earnings are his.

⁵⁸ Thus certain jurists define Kitabah as freedom of control for the slave without freedom in wealth.

Question 1820) A man makes *Mukatabah* with his slave-girl and then has sex with her. Does he owe her anything?

A: Yes, 'Uqr.

Question 1821) The owner violates the *Mukatab* slave-girl or her child. What is the violation?

A: He will be held accountable just as if anyone else had committed the violation.

Question 1822) The owner destroyed the wealth of the *Mukatab* slave-girl. What is the ruling?

A: He is liable for whatever he destroyed.

Question 1823) A *Mukatab* buys his father or son, will the father/son be automatically freed?

A: He will not be immediately freed. He will join him in the *Mukatabah* and will be free with the *Mukatab*.

Question 1824) The *Mukatab* bought the mother of his child [*Ummul Walad*] with his child. What is the child's status?

A: The child enters into the Kitabah and he cannot sell the mother.

Question 1825) If he buys a Mahram blood relative other than his father or son, does that relative enter the Kitabah?

A: According to Imaam Abu Hanifah رحمته الله he does not enter the Kitabah unless he and the purchaser have a relationship of birth.

Question 1826) The *Mukatab* pays his due on the set dates, and then a date arrives where he is unable to pay. Will the court declare him unable to pay?

A: According to Imaam Abu Hanifah رحمته الله⁵⁹ if the slave has debts which he must pay or wealth advanced to him then there should not be haste in declaring him unable to transact. He should be given two or three days' respite. If thereafter he cannot present any valid excuse the owner may demand that he be incapacitated and the Kitabah annulled by the court. According to Imaam Abu Yusuf رحمته الله he will not be incapacitated until he misses two dates.

Question 1827) When the *Mukatab* is again incapacitated does he become a normal slave again?

A: Yes, and whatever he earned belongs to the owner.

Question 1828) The *Mukatab* possessing the amount of the contract. Does his death annul the contract?

A: No, the amount of the Kitabah will be taken from his wealth and he will be deemed to have been free in the final part of his life.

Question 1829) After the court ruled that he was freed in the final part of his life and the amount of the Mukatabah taken from his wealth, some wealth was left.

A: His heirs will take it.

Question 1830) What is the status of his children?

A: They will also be deemed to have been freed.

Question 1831) The *Mukatab* did not leave enough to fulfil the contract and left behind a child born during the Kitabah period. What is the status of the child? Does it remain upon the Kitabah?

A: The child will be a *Mukatab* and will pay according to Imaam Abu Hanifah رحمته الله according to the dates of his father. Once he fulfils the amount the father will be deemed to have been freed before his death and the child will be freed as well.

⁵⁹ And Imaam Muhammad رحمته الله [al-Hidayah]

If the *Mukatab* bought a boy during the Kitabah, the boy will either have to pay up the amount immediately or revert to full slavery.

Question 1832) A Muslim man demanded pig or wine from his slave as Kitabah. What is the status of the agreement?

A: The Kitabah is fasid.

Question 1833) If the *Mukatab* then pays the pig or wine will he be deemed free?

A: Yes, but he will have to earn the price of it and pay an amount not less than the stated amount but it can increase.

Question 1834) The Kitabah was for the value of the *Mukatab* himself. What is the status of this agreement?

A: It is Fasdi because the price is unknown in terms of number, type and description. Nevertheless, if does pay it he is freed.⁶⁰

Question 1835) The owner agreed to a Kitabah for an unspecified animal or cloth of unspecified type. What is the status of the Kitabah?

A: It is valid in the first case, not the second.⁶¹

Question 1836) The owner makes a Kitabah with his two slaves for 1000 Dirham. Is this correct?

A: Yes, thus if they render the amount they will both be freed, if they are unable, both revert to normal slavery.

⁶⁰ Because he is the substitute.

⁶¹ Meaning that if he specified the species but not the quality; it will be interpreted as medium quality. The owner will be forced to accept the price. If he did not specify the specie, e.g., he only says, "A beast," then it is not valid. There are many species thus the requirement is completely unknown. [al-Hidayah]

Question 1837) He made a Kitabah of two slaves whereby each is liable for the other. Is this valid?

A: Yes, whichever pays the entire amount frees both of them and will claim half the amount from the other.

Question 1838) He made a Kitabah and then freed the *Mukatab*. What is the ruling?

A: He is freed with the manumission and the amount of the Kitabah is forfeit.

Question 1839) The owner made a Kitabah agreement and then died. Is the agreement nullified?

A: No, the *Mukatab* will continue to pay the heirs upon the agreed dates.

Question 1840) If one of the heirs frees him, is his manumission valid?

A: If one frees him, he is not free. If they all free him then he will be free and the amount is forfeit.

Question 1841) Can the owner make Kitabah with his *Ummul Walad*?

A: Yes, but if he dies before the amount is paid she is still freed due to being his *Ummul Walad*.

Question 1842) He made Kitabah with his slave-girl and then impregnated her and she bore his child. What does she do?

A: She can either continue paying to free herself; or she can declare herself incapacitated and await his death for her freedom as his *Ummul Walad*.

Question 1843) What is the ruling if he makes Kitabah with his *Mudabbar*?

A: The Kitabah is valid. If the owner dies and leaves no wealth besides the slave, then he can either compensate the estate two-thirds of his value or the full Kitabah amount.

Question 1844) A man made Kitabah with his slave-girl then *Tadbir*. What is her status?

A: The *Tadbir* is valid. She may choose to fulfil the Kitabah or she may incapacitate herself in which case the laws of *Tadbir* will apply upon her.

Question 1845) If she chose the Kitabah and the owner dies, will she still be freed on the basis of *Tadbir*?

A: According to Imaam Abu Hanifah رحمته الله if she chose the Kitabah and the owner dies and she is his only wealth, then she may either pay two-thirds of the Kitabah amount to the estate or two-thirds of her value.⁶²

Question 1846) A *Mukatab* bought a slave from the Kitabah money. He then frees the bought slave in exchange for money. Is that permissible?

A: No.

Question 1847) If he instead gives this bought slave as a gift in exchange for compensation?

A: The gift is not valid.

Question 1848) What is the ruling if the *Mukatab* makes Kitabah with the bought slave?

A: The Kitabah is valid. If the second one pays his amount before the first then he is free and his *wala* is owned by the original owner. If he pays after the first *Mukatab* then the first *Mukatab* has his *Wala*.

⁶² According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله she will pay whichever is the lesser of the two.

Question 1849) Can the *Mukatab* get a slave-girl he bought married?

A: Yes he can.⁶³

Wala [Right of "clientship"]

Question 1850) What is *Wala* linguistically and in Shari'ah?

A: It is derived from *Wali*, meaning "near." In Shari'ah it is the right of the ex-owner arising from freeing his slave; or *Muwalah* agreement. Thus there are two kinds of *Wala* – *Walaul 'Itaqah* [manumission] *Walaul Mawalah* [voluntary clientship].

Question 1851) Explain the laws related to *Walaul 'Itaqah*.

A: When a man frees his slave, male or female, then he holds *Walaul 'Itaqah*. This is whether he frees him in exchange for wealth or for free. If the *Mukatab* is freed after the death of the owner then the heirs hold the *Walaul 'Itaqah*.

Question 1852) A man made *Tadir* with his male or female slave, or he made his slave-girl *Ummul Walad*. Who holds the *Wala*?

A: The *Mawla* [owner] holds the *Wala* because they were freed through him.

Question 1853) You have mentioned that if one holds one's *Mahram* relative then the relative is freed. Does the owner then hold *Wala*?

A: Yes, the owner holds *Wala*.⁶⁴

⁶³ Because he will acquire the *Mahr*, hence it is an earning.

⁶⁴ An example is if one of two sisters buys their father and he then dies. The two sisters together inherit two-thirds as they Quranic stipulation and the one who bought him gets another third as *Wala* holder if there are no '*asabah* relatives because *Wala* is further than '*asabah*.

Question 1854) One man's slave married another's slave-girl. The slave-girl's owner then frees her after the slave husband had impregnated her. Who holds the child's *Wala*?

A: The child is freed with its mother and its *Wala* is held by the one who freed the mother. It will not aver from him ever. The same applies if she gave birth to the child in less than six months.⁶⁵

Question 1855) If she gave birth after more than six months since manumission, who has the *Wala* of the child?

A: The mother's owner has the child's *Wala* as well, unless the child's father was also freed, in which case the *Wala* goes to the father's ex-owner.

Question 1856) A non-'Arab married a slave-girl whom an 'Arab had freed. She then has children. What is the status of the children in terms of *Wala*?

A: According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله the mother's ex-owners hold the *Wala*. According to Imaam Abu Yusuf رحمته الله the father holds the *Wala* because lineage is attributed to fathers.

Question 1857) A man frees his slave and stipulates that he does not hold his *Wala*, but the Muslims in general hold it. Is this valid?

A: No, *Wala* is established to the one who freed the slave. His denial of it has no effect.⁶⁶

Question 1858) What is the effect of this *Wala*?

A: It has the effect of including one amongst the '*Asabah*, who are those who inherit after the *Ashab al-Furud* [those stipulated in the

⁶⁵ Because it is certain that she was pregnant with it at the time of manumission.

⁶⁶ Because the stipulation contradicts the clear words of the Hadith, "*Wala* is for the one who frees." [al-Jawharah]

Quraan. If the freed slave has 'Asabah in terms of lineage then they are more entitled than the ex-owner. If he does not have such 'Asabah, then the ex-owner inherits. The ex-owner is less entitled than the 'Asabah of lineage and more entitled than *Zawil Arham* [relatives not 'Asabah].

Question 1859) The ex-owner dies then the freed slave dies. The ex-owner has children. Who inherits the slave's estate?

A: The sons of the ex-owner inherit, not the daughters.⁶⁷

Question 1860) Do women acquire *Walaul 'Itaqah*?

A: Yes, if women free a slave, or the slave they freed frees a slave; or they make *Kitabah* or the slave they made *Kitabah* with made *Kitabah*; or they made *Tadbir* or the slave they made *Tadbir* with made *Tadbir*; or drawing *Wala* of those they freed⁶⁸; or the freed one of one they freed.

Question 1861) The ex-owner dies. He leaves behind a son and sons of another son. The freed-slave then dies. Who takes the inheritance of the freed-slave?

A: The son inherits, not the grandsons. *Wala* goes to the most senior i.e. the closest, and the son is closer to the deceased than the grandsons.

⁶⁷ Because the *Wala* is based on 'Asabah, which does not include females.

⁶⁸ The scenario of the drawing: A woman owns a slave. With her permission he marries a slave-girl who was freed. She then bears his child. The child's *Wala* is held by the ex-owners of the mother. If the woman then frees her slave, the child's *Wala* becomes drawn to himself. The ex-owner then draws that to herself.

The scenario of drawing the *Wala* of a freed slave's freed slave is that a woman freed a slave then that slave bought a slave. The second slave then married a freed slave-girl who then bore his child. The ex-owners of the mother hold the child's *Wala*. If the first slave frees the second slave, the second slave draws the child's *Wala*, then the first slave draws it to himself, then the woman ex-owner draws it to herself.

Question 1862) Explain *Walaul Mawalah* and its regulations.

A: When a man embraces *Islaam* on the hands of another and establishes *Wala* with him whereby the second man will inherit from him and pay any blood money that may arise; or if he establishes the *Wala* with one besides the man on whose hands he had embraced *Islaam* then the *Wala* is valid and the *Mawla* is liable for the blood money. If the man dies without heirs the *Mawla* inherits from him. If there is an heir, the heir is more entitled than the *Mawla*.

Question 1863) Two men established *Wala*. Can one of them change *Wala* to another man?

A: It is allowed as long as the *Mawla* did not yet pay any blood money on his behalf.

NOTE: The *Mawla* of *Walaul 'Itaqah* cannot make *Walaul Mawalah*.⁶⁹

Kitabul Ibaq [Running away]

Question 1864) What is *Ibaq*?

A: It is the deliberate, disobedient running away of a slave from his owner. The runaway is called *Abiq*.

Question 1865) A man returns a runaway slave to his owner. Does the man deserve a reward?

A: Yes, if he returned him from a distance of three days' journey or more then the owner must give him 40 Dirham. If less than that, then in proportion.

⁶⁹ The two differ in three aspects: In *Walaul Mawalah* both inherit from each other if they both agree, unlike *Walaul 'Itaqah*. Secondly, *Walaul Mawalah* can be cancelled unlike *Walaul 'Itaqah*. Thirdly, *Walaul Mawalah* has less entitlement than *Zawil Arham*, *Walaul 'Itaqah* is the opposite. [al-Jawharah]

Question 1866) And if the slave is worth less than 40 Dirham?

A: He will be paid the slave's price, less 1 Dirham.

Question 1867) A man seizes a runaway slave to return him to his owner. The slave escapes from the man. What is the status of his reward?

A: He is not entitled to a reward just as he is not liable for the slave escaping from him. It is appropriate for him to make witnesses that he is taking the runaway to his owner when he seizes him.

Question 1868) The runaway was *Rahn*. A man seized him and returned him. Is his reward due from the *Rahim* or *Murtahin*?

A: *Murtahin*.

Kitabul Jinayat [Violations]

Question 1869) What are the linguistic and Shar'i definitions of *Jinayah*?

A: Linguistically it is to commit an act which causes harm to someone. In the terminology of the Fuqaha it is the transgression of one party against another in his life or appendages. Transgression in life means murder, whether it is deliberate or accidental. Transgression against appendages means cutting a hand, leg, ear or putting out an eye etc.

Question 1870) Are there different kinds of *Qatl* [murder]?

A: There are five kinds:

1. *'Amad* [premeditated]
2. *Shibhu 'Amad* [resembling premeditated]
3. *Khata* [mistake]
4. That which is legally deemed a mistake
5. *al-Qatl bi sabab* [killing via a means]

Question 1871) Explain the regulations of these five categories:

1. Premeditated murder is the deliberate striking with a weapon or what can be used as a weapon such as a sharp piece of wood or stone. It is a sin and causes the perpetrator to be disinherited. *Qisas* [retaliation] will be implemented unless the *Awliya* [family] forgives him. No *Kaffarah* is accepted.
2. *Shibhu 'Amad* is the deliberate striking with that which is neither a weapon nor is used as a weapon. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله if one strikes with a large rock or large wood then it is also regarded as *'Amad*. They define *Shibhu 'Amad* as deliberately striking with that which generally does not kill. In either case, both parties agree that it is a sin and *Kaffarah* must be paid. There is no *Qisas*, but there is *Diyah Mughallazhah* upon the *'Aqilah*. We shall explain the meanings of these terms later InshaAllaah.
3. *Khata* consists of two kinds:
 - Mistake in intention, e.g. a man shot another, thinking him to be prey.
 - Mistake in action, e.g. he aimed at a target but it hit a man instead.In these cases he is not guilty of the sin of murder but must pay *Kaffarah* which is *Diyah* to the *'Aqilah*.
4. That which is legally deemed a mistake, e.g. someone is sleeping and turns over onto another person, killing him. The ruling is the same as *Khata*.
5. *al-Qatl bi sabab* e.g. a man digs a well or places a rock in a property which is not his. Someone slips and dies. He must pay *Kaffarah*, and *diyah* to the *'Aqilah*.⁷⁰

Qisas fin Nafs [Retaliation for a life]

Question 1872) What is *Qisas*?

A: It is the killing of the murderer in retaliation for the life of the victim. It is *Wajib* for the killing of every person whose blood is held permanently sacred when killed deliberately.

⁷⁰ But he is not disinherited.

Question 1873) What is the ruling of a freeman killing a freeman or a slave; or a slave killing a freeman or a slave?

A: In each case the murderer will be executed irrespective whether the murderer is slave/freeman or the victim is slave/freeman.

Question 1874) What is the ruling of retaliation for killing a Zimmi and *Mustamin* [foreign Kafir who obtained permission to enter the lands of Islaam]?

A: A Muslim will be executed for killing a Zimmi. Neither a Muslim nor a Zimmi will be executed for killing the *Mustamin*.

Question 1875) What is the ruling if a man killed a woman; or a woman killed a man; or an adult killed a minor; or a healthy person killed a blind man/ chronically ill/ insane/ one who lost limbs?

A: Retaliation will occur in all these cases. Allaah says, "We had decreed upon them that a life for a life and an eye for an eye and a nose for a nose and an ear for an ear and a tooth for a tooth and retaliation for wounds." [al-Maidah:45]

Question 1876) Is there retaliation if a man killed his son/ slave/ Mudabbar/ Mukatab/ son's slave?

A: No.

Question 1877) A man has the right to claim retaliation against his father. Will the father be executed?

A: No, the execution will be lifted due to respect of the fatherhood.

Question 1878) A child or madman deliberately killed. Will they be executed?

A: Their premeditated murder is deemed *Khata*. The *'Aqilah* will pay *Diyah*.

Question 1879) What is the ruling if the killer pays a compromise to the *Awliya* of the victim?

A: The execution is omitted and the money is *Wajib*, however little or much it may be.

Question 1880) If one of the partners foregoes the retaliation; or compromises on his share for a consideration, what do the rest do?

A: Retaliation is foregone in both cases. The remaining parties are still entitled to their shares of the *Diyah*. The murderer should not give them difficulty but should pay them in a good way, just as the family of the victim should not harm him. Allaah says, "He who is pardoned for killing his brother then he must be pursued in a good manner and payment made with kindness." [al-Baqarah:178]

Question 1881) A man killed several people. The victims' demanded retaliation. What is the ruling?

A: He will be executed as soon as retaliation is demanded for one of them. The claims of the rest are then forfeit.

Question 1882) A group of people killed one person. Will they be executed?

A: Yes, all will be executed.

Question 1883) A murderer died before he could be executed. What is the ruling?

A: The retaliation is forfeit. Nothing can be claimed from his estate.

Question 1884) A slave confesses to premeditated murder. Will he be executed?

A: Yes.

Question 1885) A man shot another deliberately. The arrow continued and killed another. What is the ruling?

A: He will be executed for the first murder and must pay *Diyah* to the 'Aqilah of the second victim.

Question 1886) A man made *Kitabah* with his slave. The Mukatab was then killed. Who is entitled to retaliation?

A: If the Mukatab has no other heir besides the owner, then the owner has right of retaliation if he did not leave enough to cover the *Kitabah*. If he did leave enough, and the heir is not the Mawla, then the Mawla does not have retaliation, even if the heirs are joined with the Mawla.

Question 1887) A man left his slave as collateral. That slave was killed. Will the killer be executed?

A: Yes, retaliation is *Wajib* on condition that the *Rahin* and *Murtahin* both demand it.

Question 1888) A man wounded another. The victim remained wounded and bedridden until he died. Is there retaliation?

A: Yes.

Question 1889) How are executions performed?

A: Executions are only done by sword.

Retaliation for body parts

Question 1890) What are the laws of retaliation for body parts?

1. If a man cuts the hand of another from the joint, the cutter's hand will be amputated. Similarly if he cuts a leg or soft part of the nose, those organs will amputated from the cutter.

2. If a man strikes another on the eye and thereby puts it out then there is no retaliation. If the eye remains but is blinded, then there is retaliation. A mirror will be heated. Moist cotton will be placed on his eye. His other eye will face the mirror until it is blinded.⁷¹
3. If a man extracts the tooth of another then there is retaliation. There is no retaliation in bones, other than teeth.
4. There is retaliation for fracturing a skull where fracturing can be mimicked.
5. There is no retaliation for cutting off the tongue or the penis, unless it is cut from the glans.⁷²
6. There is no retaliation between a man and a woman besides retaliation for a life; just as there is no retaliation between a freeman and a slave, and between two slaves for anything besides life.
7. There is retaliation for organs between a Muslim and a Zimmi.
8. A man cuts into half a man's arm and it heals. There is no retaliation.
9. If an internal wound is afflicted and it heals then there is no retaliation.
10. If a man with a cripple or defective hand cuts a non-defective hand then the victim has a choice – he can either have the perpetrator's defective hand cut with no further claim, or he can demand complete *Arsh*. (*Diyaat* – compensation)
11. A man fractures the skull of another, temple to temple. The victim has a choice. He can demand retaliation, beginning from whichever temple he wishes, or he can demand complete *Arsh*. (*Diyaat* – compensation)
12. If two men cut the hand of one man then there is no retaliation. Each of them must pay half the *Diyah* of a life.

⁷¹ This is according to the medical knowledge of the time. If modern medicinal methods are used, then there is no problem as long as the limits of retaliation have not been exceeded.

⁷² i.e. if the tongue is partially cut. If cut from the root, then there is retaliation according to Imaam Abu Yusuf رحمته الله. As for the penis, it erects and subsides, hence equality in retaliation is impossible. According to Imaam Abu Yusuf رحمته الله there is retaliation if cut from the root.

13. A man cuts the rights hands of two men. They both present their claims. They can cut off his hand and take half *Diyah* of life which will be shared in two halves amongst them. If one presents the case and has his hand cut off, then the other can claim half *Diyah*.
14. *Shibhu 'Amad* is only found in life retaliation. Everything else is 'Amad or *Khata*.

Kitabud Diyat [Blood Money]

Question 1891) What is *Diyah* linguistically and in Shari'ah?

A: It is a root-word on the scale of '*idah* whereby the *Faul Kalimah* has been dropped. The grammatical sequence is read, "*wada yadi wadyan wa diyatan fahuwa wadin.*" In Shari'ah it is money which becomes *Wajib* upon the killer when he committed *Khata*, or *Shibhu 'Amad*, or cut an organ. The compensation for cutting organs is also called *Arsh*.

Question 1892) Explain the rules and amount of *Diyah*.

1. When a man kills another *Shibhu 'Amad* then the killer's '*Aqilah* must pay *Diyah Mughallazhah* and the killer must give *Kaffarah*. According to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله *Diyah Mughallazhah* is 100 camels as follows – 25 *Bint Makhad* [female in second year]; 25 *Bint Labun* [female in third year]; 25 *Hiqqah* [in fourth year]; and 25 *Jaza'ah* [in fifth year]. There is no *Mughallazh* in anything besides *Shibhu 'Amad*; and when *Diyah* is decided upon as anything besides camels then there is also no *Mughallazh* even in *Shibhu 'Amad*.
2. In *Qatlul Khata*, *Diyah* is *Wajib* upon the '*Aqilah* and *Kaffarah* upon the killer. The *Diyah* here is in five groups – 20 *Bint Makhad* [female in second year]; 20 *Ibn Makhad* [male]; 20 *Bint Labun* [female in third year]; 20 *Hiqqah* [in fourth year]; and 20 *Jaza'ah* [in fifth year]. This *Diyah* is not *Mughallazh*.
3. *Diyah* in gold is 1000 Dinar and in silver is 10,000 Dirham.
4. According to Imaam Abu Hanifah رحمته الله there is only these three kinds of *Diyah*. According to Imaam Abu Yusuf رحمته الله and Imaam

Muhammed رحمته الله *Diyah* is of these three categories as well as cattle, goats and clothing. If the court rules according to cattle, it will be 200 head of cattle, if goats then 1000, if clothing then 200 sets – each set being two pieces of clothing.

5. A complete *Diyah* of a life is *Wajib* in *Shibhu 'Amad* and *Khata* and is *Mughallazh* in the first case.
6. A complete *Diyah* – 100 camels – is due for cutting off a nose, tongue or penis.
7. A complete *Diyah* is due if one struck a man on the head, making him lose his mind.
8. A complete *Diyah* is due if one plucked or shaved a man's beard and it did not regrow.
9. A complete *Diyah* is due if one plucked or shaved a man's head and the hair did not regrow.
10. A complete *Diyah* is due if one hit a man or otherwise did such an act which resulted in him losing his eyebrows or eyes.
11. A complete *Diyah* is due if one cut both hands/legs/ears.
12. A complete *Diyah* is due if a man's lips or two middle incisors were cut; or a woman's two nipples were cut.
13. If one of these things were cut then it is a half *Diyah*.
14. A complete *Diyah* is due if the eyelids were cut. If one eyelid was cut then a quarter *Diyah*.
15. Each finger or toe, irrespective which is a tenth of a *Diyah*.
16. For every joint of a finger or toe which has three joints the *Diyah* is a third of the *Diyah* of the digit. Similarly it is half for every digit which has two joints.
17. If all the fingers of a hand are cut, or the palm is cut with the fingers, then it is half *Diyah* in both cases.
18. If the arm is cut up to half the forearm, then for the fingers and arm there is half *Diyah*. Excess is judged by a just person.
19. For an extra finger will be the ruling of a just person.
20. If a toe is cut off and an adjacent toe becomes lame as a result, then there is *Arsh* for the two and not *Diyah* according to Imaam Abu Hanifah رحمته الله.
21. For every tooth there are 5 camels. Molars and other teeth are treated equally.
22. If a tooth is taken out and another grows in its place then the *Arsh* is forfeit.

23. If an organ is struck and becomes loses its use, then there is full *Diyah* just as if it was cut, e.g. if an arm becomes paralysed or an eye is blinded.
24. If is undetermined whether an eye/ tongue/ penis of a child does not function then the ruling of a just person is made.

Question 1893) Explain the kinds of skull wounds.

A: There are ten kinds:

1. *Hasirah* [scratching the skin without bleeding]
2. *Dami'ah* [blood emerges but does not flow]
3. *Damiyah* [blood flows]
4. *Badi'ah* [the skin is cut]
5. *Mutalahimah* [the flesh is penetrated]
6. *Simhaq* [the periosteum or skin between the flesh and bone is penetrated]
7. *Muwaddihah* [the bone is exposed]
8. *Hashimah* [the bone is broken]
9. *Munaqqilah* [the bone moves after being broken]
10. *Ammah* [penetrates to the brain]

Question 1894) What are the rulings of these wounds?

1. *Muwaddihah* – if deliberate then there is *Qisas*?
2. There is no retaliation in other kinds of wounds.⁷³
3. Anything less than *Muwaddihah* will be according to the judgement of a just person.
4. For *Muwaddihah* there will be a twentieth of *Diyah* if it was accidental.
5. For *Hashimah* there will be a tenth of *Diyah*.
6. For *Munaqqilah* there will be a tenth and twentieth of *Diyah*.
7. For *Ammah* a third of *Diyah*.
8. For *Jafah*⁷⁴ there is a third of *Diyah*. If it penetrates both [hollows] then it is two *Jafah* and for that there is two-thirds of *Diyah*.

⁷³ Because exact equality cannot be assured.

⁷⁴ Wound which penetrates to the hollow of the stomach or back.

Question 1895) A man wounded another *Muwaddihah*. As a result he lost his senses or hair. Does he pay two *Diyah*?

A: No, the *Arsh* of *Muwaddihah* is included in the *Diyah*.⁷⁵

Question 1896) What is the ruling if he lost his hearing or sight or both?

A: The *Arsh* of *Muwaddihah* and the complete *Diyah* are both payable.⁷⁶

Question 1897) A man wounded another's skull *Mutalahimah*. No trace remained and the hair grew again. What is the ruling?

A: According to Imaam Abu Hanifah رحمته الله the *Arsh* is forfeit. According to Imaam Abu Yusuf رحمته الله he is liable for the *Arsh* of the pain. According to Imaam Muhammed رحمته الله is liable for the doctor's expenses.

Question 1898) A man wounds another whereby retaliation becomes *Wajib*. When will it be taken?

A: When the victim recovers, not before.

Question 1899) A man cut another's hand by accident. Then before he could recover he killed him by accident. Do two *Diyah* become *Wajib*?

A: He is liable for a complete *Diyah* and the *Arsh* of the hand is forfeit. If he recovered before being killed then there is *Diyah* of the hand and another for the life.

⁷⁵ Because the loss of senses is the loss of the benefit of all organs and the loss of hair is accounted in a *Muwaddihah* wound.

⁷⁶ According to Imaam Abu Hanifah رحمته الله and Imaam Muhammad رحمته الله. According to Imaam Abu Yusuf رحمته الله *Arsh* of *Muwaddihah* is included in *Diyah* of hearing and speech but not sight.

NOTE: The *Diyah* of a Muslim and a Zimmi are equal. The *Diyah* of a woman is half that of a man.

Qatl bi Sabab [Homicide]

Question 1900) A man dug a well in the pathway of the Muslims or placed a rock there. As a result a human got killed. What is the ruling?

A: His *'Aqilah* is responsible for a complete *Diyah*. We had mentioned before that there is no *Kaffarah*.

Question 1901) What is the ruling if an animal got killed?

A: He is liable to pay for it.

Question 1902) A man constructs a skylight or gutter along the road. It falls and kills a man. What is the ruling?

A: Complete *Diyah* is liable, the *'Aqilah* is responsible for it.

Question 1903) A man dug a well in his own property. Someone died because of it. Is the digger liable?

A: No.

Question 1904) A wall started leaning towards the road of the Muslims. The owner was requested to break and he did not. The wall then fell and killed someone or caused loss of wealth. Is the owner liable?

A: If witnesses were made to the request for demolishing the wall and he did not demolish it within a time that he could, then he is liable for whatever life or wealth is lost.

Question 1905) A Zimmi requested that he demolish it. Is his rights the same as a Muslim's in this?

A: A Muslim and a Zimmi are the same in this.

Question 1906) A wall was leaning on a man's house. Someone besides the house's owner requested the wall to be demolished. The wall's owner did not, and it fell, destroying life or property. Is he liable?

A: The request is the exclusive prerogative of the house's owner. If there are other inhabitants then they may also request it.

Violations caused by animals

Question 1907) If a mount knocks something, who is liable?

A: The rider is liable for what it tramples or destroys with its forelegs or bites. He is not liable for what is knocked by its hind legs or tail.

Question 1908) If the mount urinated or defecated in the road, by which a human got killed, is the rider liable?

A: No.

Question 1909) You only mentioned a rider. What about one drags or pushes an animal?

A: The one who brings the animal up from its behind is responsible for the damage of its forelegs and hind legs. The one who brings the animal up from front is responsible for its forelegs, not hind legs.

Question 1910) A man leads a herd. One of the animals tramples a man or wealth. What is the ruling?

A: He is liable. If he had someone bringing the animals from behind as well then both are liable.

Question 1911) Two horsemen collided and died. Who is liable?

A: The 'Aqilah of each will pay the *Diyah* of the other.

Crimes of the slave

Question 1912) Who is liable for the accidental violation of the slave?

A: The owner can either hand the slave over to the victim or he can ransom the slave by paying the *Arsh* of the violation.

Question 1913) If he commits a crime a second time?

A: The ruling of the second is the same as that of the first.

Question 1914) What is the ruling if he commits two violations?

A: The owner may either hand him over to the two victims who will share him as per the value of their rights, or the owner may ransom him by paying the *Arsh* of both victims.

Question 1915) A slave committed a violation. His owner then set him free, knowing about the violation. What is the ruling?

A: The ex-owner is liable to pay the *Arsh*.

Question 1916) Who is liable if a Mudabbar or Ummul Walad commits a crime?

A: The owner is liable. He will pay whatever is the lesser of the slave's price and the *Arsh*.

Question 1917) If the slave commits another crime, and the owner has already paid the slave's price to a victim, what must the owner do now?

A: If he made the first payment through a court order, then he does not pay anything. The second claimant will claim from the first and they will share in what the first claimant took. If it was without a court order, then the second claimant may either claim from the slave's owner or from the first claimant.

Crimes against a slave

Question 1918) A man killed a slave by mistake. What is he liable for?

A: He will be liable for the price of the slave. If however the price is 10,000 Dirham or more, then he will pay 10,000 less 10.

Question 1919) A man killed a slave-girl by mistake. What is he liable for?

A: He is liable for her price. If her price is more than *Diyah*, then he must pay 5,000 less 5.⁷⁷

Question 1920) What is a man liable for if he cuts off the hand of a slave?

A: He is liable for the price of the slave to an amount not exceeding 5,000 less 5. Whatever is valued in terms of *Diyah* for a free victim, is valued according to the price of the slave in regards his organs.

Masail of the foetus

Question 1921) A man struck a freewoman's belly. As a result she had a miscarriage. What is he liable for?

A: He is liable for *Ghurrah* which is a twentieth of *Diyah*.⁷⁸

⁷⁷ Al-Hidayah mentioned "less 10," which is the Zahirur Riwayah. Al-Qudiri mentions the narration of al-Hasan from Imaam Abu Hanifah رحمه الله.

Question 1922) If the baby came out prematurely because of the strike, but was alive and only died later, what is the penalty?

A: Complete *Diyah*.⁷⁹

Question 1923) What is the penalty if she first drops the dead foetus and then she herself died?

A: Complete *Diyah* for the mother and *Ghurrah* for the foetus.

Question 1924) And if she first died and then the dead foetus emerged?

A: Complete *Diyah* for the mother and nothing for the foetus.

Question 1925) If the mother died then the baby emerged alive and then died, what is the penalty?

A: Two *Diyah*.

Question 1926) What do you say if someone struck a slave-girl's stomach and she had a miscarriage?

A: If the dead foetus is male then the penalty is a twentieth of the boy's value had it lived; and if it is female then a tenth of the price.

Question 1927) Who is the recipient of the foetus's penalty?

A: If the mother was a freewoman then the penalty will be shared by the heirs of the foetus according to their inheritance shares. If the mother was a slave then her owner gets the penalty money.

⁷⁸ i.e. a twentieth of the *Diyah* of a man (500 Dirham), whether the foetus is male or female. This is when at least part of the foetus's form has become apparent. According to us the 'Aqilah must pay it within a year. [al-Jawharah]

⁷⁹ Upon the 'Aqilah [al-Jawharah]

Kaffarah

Question 1928) You have mentioned that *Kaffarah* is due in the killing of *Shibhu 'Amad* and *Khata*. Explain whether this is *Kaffarah*.

A: Allaah has explained the *Kaffarah* of killing in Suratun Nisa, "... freeing a believing slave. He who does not find should fast two consecutive months as obtaining Allaah's forgiveness."

Question 1929) Is there *Kaffarah* for killing a slave, slave-girl or foetus?

A: No.

Question 1930) Can one not feed the poor as in *Kaffarah* of *Zhihar*?

A: No.

Qasamah [Oath for investigating murder]

Question 1931) A man was found murdered in a certain district. The murderer is not known. How will the murder be investigated?

A: Rasulullaah ﷺ has taught a way for it. It is to take an oath from 50 men of that district. This process is called *Qasamah*.

Question 1932) Who chooses these 50? How are the paths taken?

A: The *Wali* of the victim will choose them. There may not be any children, madmen, women, slaves, *Mudabbars* or *Mukatabs* amongst them. They will swear, "By Allaah, we neither killed him, nor do we know who killed him."

Question 1933) Are they completely absolved once they have taken the oath?

A: No, the people of that district must pay *Diyah*.

Question 1934) If the *Wali* himself is of that district, will the oath be taken from him as well?

A: He will not be forced to take the oath. He will not contribute to the *Diyah* even if he takes the oath.

Question 1935) The *Wali* chose the 50 men. Some of them refused to take the oath. What will be done?

A: They will be detained until they take the oath.

Question 1936) The *Wali* chose less than 50 men. What will be done?

A: Those chosen will repeat their oaths until 50 oaths have been taken.

Question 1937) A corpse was found with no sign of murder. Will *Qasamah* occur and *Diyah* paid?

A: There is neither *Qasamah* nor *Diyah* in this case.

Question 1938) Is there *Qasamah* if a corpse was found with blood flowing from its nose, anus or mouth?

A: This will not be regarded as murder. There will be neither *Qasamah* nor *Diyah*.

Question 1939) What is the ruling if blood is flowing from its eyes or ears?

A: It will be deemed a murder and *Qasamah* will occur.

Question 1940) A man leads a beast on which a murdered corpse is found. What is the ruling?

A: The *Diyah* is *Wajib* upon the '*Aqilah* of that man, not of the district.

Question 1941) A man was found murdered in someone's house. Who will take the oath?

A: Only the person of the house will take the oath. The *Diyah* is upon his '*Aqilah*.

Question 1942) Some of the residents of houses of a district are owners and others are tenants. Will the oath be taken from all of them?

A: According to Imaam Abu Hanifah رحمته الله the tenant will not take the oath with the original owners who according to him are those for whom the ruler had allocated the land, not those who bought property there, even if there is only one of the original owners left.⁸⁰

Question 1943) Who will take the oath if a murder victim is found on a ship?

A: The passengers and sailors who are on the ship.

Question 1944) Who takes the oath if the corpse is found in the local Masjid?

A: Upon the people of the district.

Question 1945) If he is found in the Jam' Masjid or the Highway, from which district will the 50 men be chosen?

A: There is no *Qasamah* in these two scenarios. The *Diyah* will be paid from the *Baytul Mal* [Public Treasury]

Question 1946) If he is found between two towns, upon who is the *Qasamah*?

A: Upon whichever town is closer.

⁸⁰ According to Imaam Abu Yusuf رحمته الله the buyers will also be included. [Sharhuz Zayla'i]

Question 1947) If the corpse is found in the desert, who takes the oath?

A: If there are no buildings nearby⁸¹ then no oath will be taken and there will be no consequence for his blood.

Question 1948) If the corpse is found in a river, who will take the oath?

A: If the corpse was found in the middle of flowing water then there is no consequence to his blood. If it was found trapped on a bank, then the people of the nearest town will take the oath.

Question 1949) If the *Wali* makes an accusation against a specific person, does the *Qasamah* fall away from the rest?

A: No.

Question 1950) What is the ruling if he accuses a specific person who is not one of them?

A: The *Qasamah* and *Diyah* fall away from them.

Question 1951) A man asked to take an oath testified to a specific person having committed the murder. Will his word be taken?

A: No, he will be made to swear, "By Allaah, I neither killed him, nor do I know anybody to have killed him besides so-and-so."

Question 1952) Two men testified that a man outside the district had committed the murder. Will their *Arsh* be accepted?

A: No.⁸²

⁸¹ Nearby buildings are as defined previously as based upon if a shout can be heard.

⁸² According to Imaam Abu Hanifah رحمته الله. It will be accepted according to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله.

Kitabul Ma'aqil **[Those paying blood money]**

Question 1953) You have often mentioned that the '*Aqilah* pays the *Diyah* on behalf of the killer. What is the meaning of '*Aqilah*?

A: '*Aql/ Ma'qulah* is the paying of *Diyah* on behalf of the killer. Those who do this are called the '*Aqilah*. Every *Diyah* Wajib due to actual killing [i.e. excluding compromise payments] is Wajib upon the '*Aqilah*. According to Imaam Abu Hanifah رحمته الله '*Aqilah* is those on the *Diwan*⁸³ if the killer is from amongst them. The *Diyah* will be taken from their stipends⁸⁴ over a three year period. If the stipends are issued after longer than three years or less, the *Diyah* will still be taken from there. If the killer is not of the people of the *Diwan* then the '*Aqilah* is his tribe. They will pay over three years. Each member will not pay more than 4 Dirham, 1 and a third per year. If the tribe has many members then the individual contributions will be reduced. The killer will be included in their number and will pay the same as any other member.

Question 1954) If the tribe is unable to pay, how will the *Diyah* be fulfilled?

A: The closest tribe will be joined to them.⁸⁵

Question 1955) Explain in detail what the '*Aqilah* is liable for and what not.

- A: The '*Aqilah* is responsible for the following:
1. *Diyah* of *Shibhu 'Amad*. We mentioned before that this *Diyah* is *Mughallazhah*.
 2. *Diyah* of *Qatl al-Khata*.

⁸³ The registered names of the army.

⁸⁴ The annual or twice-a-year allotments made to the soldiers.

⁸⁵ In terms of lineage. First the closest then the next closest will be joined as per the '*Asabah* sequence. [al-Hidayah]

3. *Diyah* of *Qatl bi Sabab*
4. *Diyah* if someone constricted a skylight or gutter along the public way and it fell and killed someone.
5. The deliberate murder by a child or madman is deemed *Khata*. The 'Aqilah must pay the *Diyah*.
6. When freeman commits a violation by mistake on a slave then his 'Aqilah is responsible.

The 'Aqilah is not responsible for the following *Diyah*:

1. Every 'Amad in which retaliation is dropped due to doubt results in the Killer paying the *Diyah*, not the 'Aqilah.
2. If a father kills his son deliberately then the *Diyah* is from his wealth over three years, not the 'Aqilah.
3. The 'Aqilah does not pay for a slave's violation.
4. The 'Aqilah is not responsible if the perpetrator confessed to the violation. The *Diyah* is from his money. If they however proclaim his innocence then they must pay.
5. The 'Aqilah is not liable for amounts due to *Sulh*.

Sundry Masail

1. The 'Aqilah of a freed slave is his *Mawla's* tribe.
2. The *Mawla* and his tribe are 'Aqilah for the one who entered into *Mawalah* with him.
3. The 'Aqilah is not responsible for less than a twentieth of *Diyah*. They bear from a twentieth and greater. Less than that is the responsibility of the perpetrator.

Kitabul Hudud [Penal Laws]

Question 1956) What is *Hadd* linguistically and in Shari'ah?

A: Linguistically it is "prevention." In Shari'ah it is every prescribed punishment inflicted as fulfilling Allaah's right.

Question 1957) For which sins is the *Hadd* prescribed?

A: The ruler will inflict the *Hadd* for Zina, drinking wine, slandering a chaste man or woman with Zina, and cutting the hand for stealing. We shall discuss the first three first.

Hadd of Zina

Question 1958) Explain the *Hadd* of Zina.

A: There are two categories: 100 lashes for non-*Muhsan*, whether male or female; and *Rajm* or stoning for the *Muhsan*, male or female.

Question 1959) How do the courts establish Zina to have been committed?

A: It is established through evidence or confession.

Evidence: Four witnesses testify that a man or a woman committed Zina. After they testify the court will question them, "What is Zina? How was it done? Where? When? With who?" Once they have clarified that and said, "We saw him penetrating her vagina just as an antimony-stick enters the antimony bottle," the judge will investigate the piety and justice of the witnesses. If they fulfil the requirements of justice in secret and open, he will rule according to their *Arsh* and inflict the *Hadd*. If their number falls below four or one of them is established as *Fasiq* [open sinner] then all the witnesses will be inflicted with the *Hadd* of slander.

Confession: A sane adult confesses four times to having committed Zina. The confessions will be four separate gatherings. Each time he confesses the judge will refuse him. It is recommended for the judge to refuse him in these words, "Perhaps you just touched or kissed her." When the person completes his confession as mentioned, the judge will ask him "What is Zina? How was it done? Where? With who?" Once he does that the *Hadd* becomes mandatory.

Question 1960) You have mentioned that a non- non-Muhsan is lashed 100 times. Describe this lashing.

A: His clothing will be removed except that which is needed to cover his private region. He will then be lashed with moderate force using a lash which does not have any fruits on it. The lashes must be spread over different body parts. The head, face, penis and vagina may not be lashed.

Question 1961) Is the ruling of a man and woman different?

A: They are the same except that a woman's clothing will not be removed except for her furs and padding.

Question 1962) Should they stand or sit while being lashed?

A: The man will stand and the woman will sit.

Question 1963) What is *Ihsan* [state of being *Muhsan*]?

A: *Ihsan* of stoning⁸⁶ is for the perpetrator to be a free, sane, adult Muslim who has had sex with his wife from a correct marriage⁸⁷. It is a condition that both husband and wife must be *Muhsan*.⁸⁸

Question 1964) How is one who commits *Zina* after *Ihsan* stoned?

A: He will be flung with stones until he dies. The judge will take him out to the land here sentence will be executed. The witnesses must begin stoning, then the judge, then the people. If the witnesses refuse to begin, then the stoning falls away. If the perpetrator had confessed, then the judge will begin, followed by the people. If a hole is dug to place the woman to be stoned it will be better.

⁸⁶ As distinguished from *Ihsan* of slander which does not have the conditions of marriage and sex.

⁸⁷ As distinguished from a *Fasid* marriage e.g. marriage without witnesses.

⁸⁸ Each has to be *Muhsan* for the other to be *Muhsan*. Thus if a freewoman or a slave-girl marries a slave then there is no *Ihsan* unless he has sex with her after manumission. The *Ihsan* only counts thereafter. So if a *Zimmi* has adultery with a Muslimah then accepts Islam he will be lashed not stoned.

Question 1965) Will the executed adulterer be given *Ghusl* and *Salatul Janazah*?

A: Yes.

Question 1966) A man has a slave or slave-girl who must be lashed for *Zina*. Will he do it himself?

A: He may not without court permission.

Recanting

Question 1967) A man retracts his confession. Will the *Hadd* still be inflicted?

A: He will be released even if he recants before or during the stoning and his retraction will be accepted.

Question 1968) What is the ruling if a witness recants after the decision for stoning has been passed but before implementation?

A: All the witnesses will be lashed for slander. The stoning falls away from the accused. If one of the witnesses recants after the stoning, he alone will be lashed and will be liable for a quarter *Diyah*.

When will the *Hadd* be applied and when not

1. If a man has non-vaginal sex with an unrelated woman will receive *Ta'zir* not *Hadd*.
2. He who has sex with the slave-girl of his son or his son's son will not receive the *Hadd* even if he says, "I knew that she is forbidden unto me."
3. A man had sex with the slave-girl of his father, or mother, or wife if he says, "I thought she is permissible for me," he will not receive

- the *Hadd*. If he says, "I knew that she is forbidden unto me," he will receive the *Hadd*. Similarly if a slave has sex with his owner's slave-girl and he says, "I thought she is permissible for me," he will not receive the *Hadd*. If he says, "I knew that she is forbidden unto me," he will receive the *Hadd*.
4. The *Hadd* will be inflicted if one has sex with one's brother's slave-girl or paternal uncle's slave-girl, even if one says, "I thought that she is permissible for me."
 5. There is no *Hadd* if the woman presents someone other than his bride on the wedding night and says that she is his wife. If he has sex with her he must pay *Mahr*.
 6. The *Hadd* is applied if a man finds a woman on his bed and has sex with her.
 7. There is no *Hadd* if a man marries a woman he is forbidden to and has sex with her.
 8. According to Imaam Abu Hanifah رحمہ اللہ *Ta'zir* and not *Hadd* will be inflicted on one who has anal sex with a woman or commits the act of the people of Lut عليہ السلام. According to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammed رحمہ اللہ it is the same as *Zina* and the *Hadd* will be applied.⁸⁹
 9. There is no *Hadd* upon one who commits bestiality.
 10. There is no *Hadd* upon one who committed *Zina* in the lands of the Kuffar or the rebels and then returned to the land of Islaam.

Sundry rulings

1. If a male or female slave commits *Zina* he/she will be lashed 50 times because the *Hadd* of slaves is half that of free people. They are not stoned due to lack of *Ihsan*.

⁸⁹ Ash-Shami mentions that the *Hadd* will not be applied for once-off sodomy but the ruler will execute the sodomite for repeat offences. Ibnul Humam narrates that Abu Bakr رضي الله عنه consulted the Sahabah رضي الله عنهم and they agreed with 'Ali رضي الله عنه that the homosexual should be burned. According to Imaam Abu Hanifah رحمہ اللہ there is no *Hadd* for sodomy not because it is lighter than *Zina*, but because of clear evidence. It is worse than *Zina* because *Zina* is understandable in intellectually and according to human nature, not so sodomy.

2. A *Muhsan* will not be lashed and stoned.
3. A non-*Muhsan* will not be lashed and exiled unless the ruler sees a benefit in it. In that case he will exile him for a period he deems appropriate.
4. If witnesses testified to a *Hadd* committed a while back and the distance from the court was not a factor in preventing them from testifying, then their *Arsh* will not be accepted, except for slander.
5. If a sick man commits *Zina* whereby the sentence is stoning, it will be implemented if the sentence is lashing it will be postponed until he has recovered.
6. A pregnant woman will not be punished with the *Hadd* until she has given birth. If the punishment is lashing, she will only be lashed after her *Nifas*. If stoning, then she will be stoned during the *Nifas*.

The *Hadd* of Shurb [drinking intoxicants]

Question 1969) What is *Hadd* of Shurb?

A: It is the punishment for drinking wine. He who drinks wine and is seized and is still stinking of wine, or confesses and is still smelling of wine, will be inflicted with the *Hadd*. If he confesses after the stench has departed then there is no *Hadd*.

There is no *Hadd* until he becomes sober.

The drinking is established through the *Arsh* of two witnesses or if he confesses once. The *Arsh* of women with men will not be accepted here.

Question 1970) Is the *Hadd* applied for drinking anything besides wine?

A: *Hadd* will be applied he if becomes intoxicated⁹⁰ with *Nabiz* [date infused water]. He will not be lashed until it is known that he became drunk with it and drank it willingly.⁹¹

⁹⁰ i.e. he will not be lashed if not intoxicated, as opposed to wine, the mere drinking of which is punishable. [al-Jawharah]

Question 1971) A man stinks of wine or vomits it. There are no witnesses to him drinking, nor does he confess. Will the *Hadd* be applied?

A: No.⁹²

Question 1972) What is the punishment for a drinker of wine and a drunkard?

A: He will be lashed 80 times. The lashes will be spread over his body as we have mentioned in *Hadd* of *Zina*.

Question 1973) A man confessed to drinking wine or became drunk, he then retracted his confession. What is the ruling?

A: The *Hadd* is lifted.

Question 1974) What is the punishment for a slave that drunk?

A: Half that of a freeman i.e. 40 lashes.

Hadd of Qazf [Slander]

Question 1975) What is *Hadd* of *Qazf*?

A: The punishment for one who explicitly⁹³ slanders a male or female *Muhsan* [chaste] with *Zina*. It is established by the Arsh of two men or the confession once of the slanderer. The *Hadd* becomes *Wajib* if the slandered party requests redress.

⁹¹ It is possible that he became intoxicated with another substance or was forced.

⁹² Since he might have been forced, or had no water and had to drink the wine. The doubt lifts the punishment.

⁹³ Whereby he says, "O committer of *Zina*/ You committed *Zina*/ You are an adulterer." A third party who responds to these words, "You have spoken the truth," will not receive the *Hadd* because that response is not explicit. [al-Jawharah]

Question 1976) What is the punishment of the slanderer?

A: He will be lashed 80 times. The lashes will be spread over his body. His clothing will not be removed except for fur and padding. Allaah says, "Lash them 80 times and do not ever accept their Arsh."

Question 1977) What is the ruling if the slanderer is a slave?

A: The *Hadd* is halved. He will be lashed 40 times.

Question 1978) What are the requisites for *Ihsan* in this case?

A: The slandered must be free, adult, sane, Muslim and chaste from *Zina*. He or she who fulfils these requirements is *Muhsan* and his or her slanderer will be lashed.

Question 1979) What is the ruling if someone confesses to slander and then recants?

A: The retraction will not be accepted. The slanderer will be lashed if the slandered so desires.

Question 1980) A man says to another, "You do not belong to your father." Is that slander?

A: Yes, he will be lashed.

Question 1981) A man says to another, "O son of adultery i.e. Bastard." The second man's mother is deceased and she was *Muhsan*. What is the ruling?

A: If the man demands it, the slanderer will be lashed. The *Hadd* may not be demanded in the case of a slandered dead person except by one whose lineage is defiled by the slander i.e. the son and father.

Question 1982) A man slandered a *Muhsan*. Can the *Muhsan's* Kafir son or slave son demand the *Hadd*?

A: Yes.

Question 1983) A slave has a free mother. His owner slanders his mother. Can the slave demand the penalty of slander against his owner?

A: No.

Question 1984) A man says to an 'Arab, "O Nabatean!" or what the Nabateans calls themselves, "O son of Heavenly Water!" Will the *Hadd* be applied against him?

A: No, that is not considered slander.

Question 1985) A man attributes the lineage of a man to the man's paternal uncle, or maternal uncle, or mother's husband. Is that slander?

A: No.

Question 1986) A man committed forbidden sex and the other party is not his possession. Another man slanders him about it. What is the ruling?

A: There is no *Hadd* for this slander.

Question 1987) A man slanders his wife. They do *Li'an* at the court. The man then again slanders her. What is the ruling?

A: If the *Li'an* was for the purpose of denying a child's lineage then the husband slanders her, there is no *Hadd*. If it was for the sole purpose of the husband having accused her of adultery without the involvement of any child, then he will be lashed if he slanders her after the *Li'an*.

Question 1988) A man slanders a slave, slave-girl or Kafir. Is there *Hadd*?

A: There is *Ta'zir*, not *Hadd*?

Question 1989) If he says to a Muslim, "O Fasiq [open sinner]/ Kafir/ Khabith [spiritually filthy]," is there *Hadd*?

A: No, there is *Ta'zir*.

Question 1990) Is there *Ta'zir* or *Hadd* if he says, "O donkey/ pig,"?

A: Neither.

Question 1991) Is there *Diyah* if someone died will being Islaamically lashed for *Hadd*/ *Ta'zir*?

A: No.

Question 1992) Is there any additional punishment for the slanderer besides being lashed?

A: A Muslim who has been lashed for slander may never again testify even if he repents. Allaah says, "Lash them 80 times and do not ever accept their Arsh."

Question 1993) A Kafir slandered someone and received the *Hadd*. He thereafter embraced Islaam. Can he testify?

A: Yes, his Arsh is accepted.

NOTE:

1. The maximum *Ta'zir* is 39 lashes and the minimum is 3. According to Imaam Abu Yusuf رحمته الله the maximum is 75.
2. The judge may also detain him in addition to the lashes.
3. The hardest lashing is for *Ta'zir*, then *Hadd* of Zina, then *Hadd* of drinking, then *Hadd* of slander.

Kitabus Sariqah [Theft]

Question 1994) What is *Sariqah* linguistically and in Shari'ah?

A: Literally it is to take wealth secretly. In Shari'ah it is a Mukallaf [person obligated by Islaamic Law] taking something worth 10 Dirham or more which have been demarcated according to possession or otherwise protected.

Question 1995) What punishment does the Shari'ah stipulate for the thief?

A: When a sane adult, slave or free, male or female, steals at least 10 Dirham or its value, whether in the form of currency or not, from the *Hirz* [demarcated for possession] in which there is no doubt, then it is Wajib to cut the thief's hand. Allaah says, "The male and female thief – cut off their hands because of what they have earned as a punishment from Allaah." [Al-Maidah: 38]

Question 1996) From where is the thief's hand cut?

A: The right hand is cleanly cut off at the wrist.

Question 1997) And if he steals a second time?

A: The left foot is cut. If he steals a third time then he will be indefinitely imprisoned until he repents.

Question 1998) A man stole at least 10 Dirham from a demarcated area. He left hand is lame or amputated, or his left leg has been cut off from before. Will the judge rule that his hand still be cut?

A: No.

Question 1999) How is theft established?

A: Through his confession once or the Arsh of two witnesses.

Question 2000) Must the one who was robbed be present at the cutting?

A: The thief's hand cannot be cut unless the victim is present. He will be summoned to establish the theft. Thus if he had gifted the item to the thief, or sold it, or it is worth less than the prescribed amount i.e. 10 Dirham, the thief's hand may not be cut.

Question 2001) Besides having his hand cut, is the thief liable for the stolen amount?

A: If the item remains intact in his possession then he is liable to return it. If it has been destroyed, then he is not liable.

Question 2002) A group committed the theft. Will all their hands be cut?

A: If the value of the stolen goods divided amongst them is worth at least 10 Dirham their hands will be cut. If it is worth less, then none of their hands will be cut.

Question 2003) What is deemed *Hirz* in this law?

A: There are two categories: Place such as buildings, houses and shops and Personal. Thus is the thief stole from a demarcated place or the goods were guarded by a person then the thief's hand will be cut.

Question 2004) A group entered a *Hirz* with the intention of stealing. Some of them were appointed to do the actual stealing whilst the rest did not. Will all of their hands be cut?

A: Each member of the group will have his hand cut if the loot is divided and equals at least 10 Dirham per head.

Question 2005) A thief enters his hand in the money-box or in someone's pocket. Will his hand be cut?

A: If the loot is worth at least 10 Dirham, yes.

Question 2006) A man broke the wall of a house. He stole goods and passed it onto his accomplice outside. Will their hands be cut?

A: No.

Question 2007) If he threw the goods outside and then picked it up, will his hand be cut?

A: Yes.

Question 2008) A man broke the wall of a house. He loaded loot onto his donkey and led it out. Will his hand be cut?

A: Yes.

Question 2009) If he pierced the wall and entered his hand inside whilst remaining outside, and took something, will his hand be cut?

A: No.

Question 2010) What is the ruling if someone stole something from the Masjid?

A: His hand will be cut if the owner of the goods was by the goods.

Question 2011) In which circumstances will a thief's hand not be cut?

A: It will not be cut in these scenarios:

1. For items which is regarded as free and permissible for all in the lands of Islaam e.g. wood, grass and reeds and fish which is still in the water and prey which is still in the wild.

2. Items which swiftly deteriorate e.g. fresh fruit, milk, meat, watermelon, fruits on the tree, unharvested crops.
3. *Mutribah* [illicit party] drinks.
4. *Tunbur* [eastern mandolin]
5. *Tabl*, *Daff* [eastern drums] and flutes.
6. *Mushaf* of the Quraan, even if it be jewelled.
7. Crucifix, even if it be of gold or silver.
8. Chess.
9. Backgammon.
10. Kidnapping a free child, even if he has jewels on him.
11. Abducting an adult slave. However, the hand is cut for stealing a minor slave.
12. Registers, except for accounting registers.
13. Dogs and cheetahs.
14. The one who cheats does not have his or her hand cut.
15. Grave robber.
16. A looter.
17. Embezzler.
18. One who steals from the public treasury or booty.
19. Wealth in which one has a share.
20. Stealing from a parent, child or blood related Mahram.
21. One spouse stealing from the other.
22. If slave steals from his owner, or owner's spouse.
23. If the owner steals from his Mukatab.
24. Stealing from public baths or a building in which the public is allowed access.
25. A guest who steals from his host.
26. If the thief claims that the stolen item is his property, even if he does not produce evidence.

Question 2012) You mentioned that there is no cutting of hands for stealing wood. Which wood did you refer to?

A: Worthless wood which is not demarcated for ownership. If wood which has worth, which is sold and demarcated, is stolen then the thief's hand will be cut, if the value reaches 10 Dirham e.g. Indian oak, bamboo, ebony and sandalwood. Hands are also cut for stolen woodwork such as utensils and doors.

Question 2013) A man stole an item and his hand was cut for it. He returned the item to the owner and then stole it again. What is the ruling?

A: If the item remains in its condition as when he returned it, his hand will not be cut. If the condition changed then his hand will be cut e.g. he stole thread and his hand was cut. He returned it and it was then embroidered. He then came and stole it a second time. He will again be cut.

Qutta'ut Tariq [Highway Robbers]

Question 2014) What is the punishment of highway robbers?

A: Allaah has explained it thus, "Verily the punishment for those war against Allaah and His Rasul and strive to spread corruption is to be killed or crucified or to have the hands and feet cut from opposite sides or to be exiled from the land. That is a humiliation for them in the world. In the Aakhirat (Hereafter) is a great punishment. Except those who repent before you gain control over them. Then know that Allaah is Most Forgiving, Most Merciful." [al-Maidah: 33-34]

Thus is a gang or an individual capable of obstructing goes out with the aim of highway robbery, and they are apprehended before having stolen anything or killed anyone, they ruler will detain them until they repent. If they had stolen wealth of a Muslim or Zimmi, to the extent that if divided amongst them it would be worth at least 10 Dirham per head, then the ruler will cut their hands and feet from opposite sides.

If they killed anyone without taking any wealth, they will be killed as per the *Hadd*. If the victim's family wish to pardon them, their pardon will not be considered. If they both killed and plundered, then the ruler may either kill them or crucify them.⁹⁴

⁹⁴ Whether with cutting their hands and feet first, or just killing/crucifying them. [al-'Inayah]

Question 2015) What is the method of crucifixion?

A: He will be crucified whilst living. His belly will be pierced with a spear until he dies. He will not be crucified for more than three days.

Question 2016) What is the ruling if amongst the gang was a child, madman, or blood relative of the victim?

A: The *Hadd* is lifted from the rest as well. The issue of the murder is taken to the victims' *Awliya* who may have them killed or pardoned.

Question 2017) One of the Highway Robbers murdered. Will the responsibility be applied to the entire gang?

A: Yes.

Kitabul Ashribah [Drinks]

Question 2018) Which drinks are forbidden to consume?

A: There are four forbidden drinks:

1. *Khamr* [wine]: It is grape juice when it ferments and becomes intoxicating and emits foam.
2. '*Asir* [juice]⁹⁵ when it is boiled until less than two-thirds evaporates.
3. *Naqi*⁹⁶ of dates when it ferments and intoxicates.
4. *Naqi*' of raisins when it ferments and intoxicates.

Question 2019) What do you say about boiled *Nabiz*⁹⁷ of dates or raisins?

⁹⁵ i.e. grape juice

⁹⁶ When dates/raisins is soaked in water in order to absorb its sweetness, the resultant water is called *Naqi*'.

⁹⁷ See above

A: It remains Halal if slightly boiled even if intoxication sets in it, when drunk and one's overwhelming thought is that it will not intoxicate, when drunk not merely for entertainment or frivolity.

Question 2020) What is the ruling of *Khalitan*?⁹⁸

A: Halal.

Question 2021) What is the ruling of *Nabiz* of honey, figs, wheat, barley and sorghum?

A: They are Halal whether boiled or not⁹⁹ when drunk without frivolity and entertainment.

Question 2022) What is the ruling of grape juice if boiled until two-thirds evaporate?

A: It is Halal even if it is potentially intoxicating.

Question 2023) What is the status of wine if it becomes or is made into vinegar?

A: It is Halal to eat in both cases.

Question 2024) What is the ruling of making it into vinegar?

A: Permissible.

Question 2025) What is the ruling of making *Nabiz* in *Duba* [bottle gourd], *Hantam* [green earthenware jar], *Muzaffat* [vessel coated with tar] and *Naqir* [hollowed palm]?

A: It was forbidden and then allowed. [In Narration by Muslim]

⁹⁸ Mixing the date and raisin water and boiling it slightly and leaving it until becomes fermented and potentially intoxicating.

⁹⁹ According to Imaam Muhammad رحمته الله they are Haram in large or small quantities because according to him that which intoxicates in large quantities is Haram in small quantities and is Najas also. The Fatwa is on this.

Kitabus Sayd waz Zabaih ***[Hunting and Slaughter]***

Question 2026) What is Sayd?

A: It is the act of hunting and is applied to the hunted animal as well i.e. a wild beast which refrain from humans, whether edible or not. Hunting wild beasts which are not in anyone's possession is permissible for non-Muhrim outside the Haram. Allaah says, "When you become Halal [you may] hunt."

Question 2027) How does a Muslim hunt?

A: Hunting is permissible by means of trained dogs, cheetahs, falcons and any other fanged or taloned trained beast or bird of prey. Allaah says, "Say: The pure things have been made permissible to you and that which you have trained of hunting beasts, you train them from what Allaah has taught you."

Question 2028) If the hunter sends out the trained dog or cheetah and it kills a beast, is it Halal?

A: If the animal is such an animal which is permissible to eat; the hunter recited the Name of Allaah when sending the trained animal; and the animal seized the prey and wounded it from which it died, then it is Halal to eat. Similarly if he sent a trained falcon or eagle and recited Allaah's Name, and the bird seized the animal and wounded it from which it died, then it is Halal.

Question 2029) Why have you stipulated wounding and death?

A: The wound is necessary for the animal to be Halal. Through it *Zakah Idtirari* [forced slaughter] is established. It is to wound the animal in any part of its body. The stipulation of death means that if the dog or falcon seized and wounded the animal and then left it alive and the hunter reaches it then he must slaughter it. In such a situation

Zakah Ikhtiyari [voluntary slaughter] is stipulated. If he does not slaughter it and it dies, then it cannot be eaten.

Question 2030) You have stipulated that the animal be trained. What does its training entail?

A: The training of a dog and cheetah is that it is taught to seize an animal and not eat from it. When it is trained to do that and avoids eating thrice, it is deemed trained. The training of a falcon is that it returns when summoned. That is the difference is the ruling of a trained dog and trained falcon. If the dog eats from the prey, the meat may not be eaten. However, if the falcon eats from it, it may be eaten. The condition for the falcon's training is only that it obeys when summoned and not that it does not eat from the prey.

Question 2031) If the dog or cheetah strangles the animal and it dies before being slaughtered, can it be eaten?

A: No.

Question 2032) The hunter despatched his trained dog. Another dog joined it in killing. The second dog was either a non-trained dog, the Fire-worshipper's dog, or a dog upon which Allaah's Name had not been recited upon despatch. What is the status of the meat?

A: It is not Halal to eat.

Question 2033) You have mentioned hunting by birds and beasts of prey. Is there another method of hunting?

A: Yes, hunting by shooting arrows. If a Muslim shoots an arrow at an animal and mentions Allaah's Name at the time of shooting, the flesh of an animal the arrow strikes may be eaten if the arrow wounds it and kills it. If the hunter reaches the prey and it is still alive, he must slaughter it. If he does not, the animal is not Halal.

Question 2034) He shot an animal which then fell into water. The hunter then found it dead. Or it fell on a mountain or roof and then bounced down to the earth and died. What is the ruling?

A: It is Haram to eat.

Question 2035) Does the ruling change if it fell on the earth in the beginning and then died?

A: Yes, in that case it is Halal.

Question 2036) A man shot an animal. It bore the arrow and disappeared. The hunter then found it dead. Can he eat it?

A: If the hunter continuously pursued it until he found it dead, then it is Halal. If he paused in his chase and then found it dead then it cannot be eaten.

Question 2037) What is the ruling if when shooting an animal, an organ is cut off?

A: The animal can be eaten, not the cut off organ.

Question 2038) What is the ruling if the animal got cut into two portions?

A: If cut into a third portion and two-third portion, whereby the larger portion is the hind portion, then all may be eaten. In the major portion is the fore-portion then the major portion may be eaten and the rest abandoned.

Question 2039) The arrow was shot and its side struck the animal. What is the ruling?

A: The animal may not be eaten unless the arrow had wounded it.

Question 2040) What is the ruling of hunting with *Bunduqiyah* [catapult]?

At-Tashil ad-Daruri (Part 2)

A: If the animal is killed with a catapult then it may not be eaten. If it is still alive after being struck and then is slaughtered, it may be eaten.

Question 2041) A man shot an animal. He neither wounded it nor demarcated it. A second man shot and killed it. Does it belong to the first man or the second? Can it be eaten?

A: It belongs to the second man and can be eaten.

Question 2042) What is the ruling if the first man wounded it and then the second shot and killed it?

A: The matter is reversed. It belongs to the first man and cannot be eaten. The second is liable to the first to the value of the prey less the value of the damage the first caused.

Question 2043) Is it permissible to hunt animals whose flesh cannot be eaten?

A: Yes, both animals which can be eaten and those which cannot be eaten, can be hunted.

Question 2044) Is there any category of person whose hunted animal cannot be eaten?

A: The prey of the following cannot be eaten even if they mentioned Allaah's Name when shooting or sending the trained animal – a Muhrim, a Fire-worshipper, an Apostate and an Idolater. The prey of a Muslim, Christian and Jew may be eaten if they recited Allaah's Name at the time of despatch.

Zabih [Slaughter]

Question 2045) What is slaughter? What are the conditions for the *Zabihah* [slaughtered animal] to be Halal for Muslims?

At-Tashil ad-Daruri (Part 2)

A: It is to cut the vessels which are between the throat and jaws of the animal. For the *Zabihah* to be Halal, the animal must also be such whose flesh can be eaten; the slaughterer must be a Muslim or Kitabi [Christian/Jew]; and the slaughterer must recite Allaah's Name at the time of slaughter. This is also called *Zakah*.

Question 2046) Which vessels must be slit at the time of slaughter?

A: There are four vessels to be slit – *Hulqum* [Windpipe], *Mar-i* [Foodpipe] and *Wadajan* [two Jugular veins]. When they are cut then it is Halal to eat or at least if most of them are cut according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله at least the food pipe, windpipe and one of the jugulars must be cut.

Question 2047) What is the status of the *Zabihah* if the slaughterer omitted Allaah's Name?

A: If he left it deliberately then the *Zabihah* is carrion and may not be eaten. If he left it forgetfully then it can be eaten.

Question 2048) Is it stipulated that slaughter can only be done with a knife?

A: No, if he slaughters with a bamboo, sharp stone, or anything which will make the blood flow the slaughter is valid. However, teeth and nails still attached to the body organ may not be used.

Question 2049) A sheep, cow or camel was slaughtered. A dead foetus was found in its belly. What is the status of the foetus?

A: It is carrion and may not be eaten, whether it has grown hair or not. If it emerges alive then it must be slaughtered and can be eaten. If it dies before slaughter it may not be eaten.

Question 2050) If a sheep is slaughtered from the nape, can it be eaten?

A: If the animal remains alive until the vessels are slaughtered then it can be eaten. The action however is Makruh. If it dies before the vessels are slaughtered then it is carrion and may not be eaten.

Question 2051) What is the ruling of slaughtering and wild animal which has been tamed and a domestic animal which has gone wild?

A: A tamed animal is slaughtered normally [*Zakah*]. A domestic animal gone wild is slaughtered by 'Aqr which is to wound it anywhere. This is called *Zakah Idtirari* [forced slaughter].

Question 2052) What is the status of the *Zabihah* of anyone besides Muslims and Kitabis?

A: The *Zabihah* of anyone besides these two categories cannot be eaten. The *Zabihah* of an Apostate, Fire-worshipper and Idolater may not be eaten, even if they recite Allaah's Name at the time of slaughter.

Question 2053) What is the status of the Muhrim's *Zabihah*?

A: If a Muhrim kills a prey, then it is carrion and may not be eaten. We had mentioned that in Kitabul Hajj. If he slaughters a cow, sheep, chicken or camel, they may be eaten.

Sundry Regulations

1. It is Mustahabb for the slaughterer to sharpen his knife.
2. It is Makruh to let the knife reach the spine or to cut off the head. The *Zabihah* may nevertheless be eaten.
3. It is Mustahabb to make *Nahr* of the camel [spearing the throat]. If slaughtered it is permissible but Makruh. It is Mustahabb to slaughter of sheep and cattle. If *Nahr* is made it is permissible but Makruh.
4. If an animal which cannot be eaten is slaughtered according to Shari'ah, its hide and flesh is clean, even if it cannot be eaten. The

skin of humans and pigs will however not be regarded as pure because tanning and slaughter do not have effect upon them.

What is permissible and what is forbidden to eat

Question 2054) Are there animals which cannot be eaten?

A: Fanged beats, taloned birds, domestic donkeys, mules, hyenas, lizards and all forms of vermin may not be eaten.

Question 2055) What does Imaam Abu Hanifah رحمته الله say about crow?

A: The omnivorous crow may be eaten, but not the spotted crow which eats carrion.

Question 2056) What does he say about horse meat?

A: It is Halal, but Makruh to eat lest the instruments of Jihad become scarce.

Question 2057) What is the status of rabbit meat?

A: There is no harm in eating it.

Question 2058) Can locust be eaten?

A: It is Halal. It need not be slaughtered.

Question 2059) What is the status of aquatic animals?

A: Aquatic animals are not Halal except for fish. That which died naturally and floats on the water is Makruh. There is no harm in eating the *Jirrith* fish and eel.

Kitabul Udhiyah [Sacrificial slaughter]

Question 2060) What is the status of *Udhiyah* in Islaam?

A: It is Wajib upon every Muslim who is free, sane and well-off¹⁰⁰ and resident. It is thus not Wajib upon the poor, slaves and travellers.

Question 2061) What must be slaughtered to fulfil this duty?

A: A sheep for one person, or seven can share in a cow or camel on condition that none of the seven's share is less than a seventh. Also, all seven must intend for the sacrifice. If even one of them merely wishes for the meat, then none of the seven's *Udhiyah* is made.

Question 2062) When the time of *Udhiyah* begin?

A: From true dawn on the Day of Nahr. Also, the people of cities may not slaughter before the 'Id Salah.

Question 2063) If one of them slaughtered before the Salah, what should he do?

A: He must slaughter again.

Question 2064) Are the people of villagers where there is no 'Id Salah allowed to slaughter immediately after true dawn?

A: Yes.

Question 2065) Can *Udhiyah* only be done on the Day of Nahr?

A: *Udhiyah* can be done on that day on the two days thereafter. When the sun sets on that second day, its time has terminated. The best time is the first day, then the next, then the last day.

¹⁰⁰ Well-off refers to those upon whom Sadaqatul Fitr is Wajib as has been discussed.

Question 2066) Can one slaughter during one of the two nights which fall between these days?

A: Yes, although it is Makruh due to the possibility that required vessels will not be slit.

Question 2067) Which animals cannot be slaughtered for *Udhiyah*?

A: *Udhiyah* is not permissible with animals which are blind, one-eyed, lame to the extent that it cannot walk to the sacrifice place, nor emaciated animals which have no marrow in their bones, nor animals with cut ears or tails, nor that which most of the ear or tail is cut.

Question 2068) What is the ruling if most of the tail and ear is intact?¹⁰¹

A: It may be slaughtered in *Udhiyah*.

Question 2069) Can the following animals be slaughtered for *Udhiyah* – hornless, castrated, mad and mangy animals?

A: Yes.

Question 2070) Which animals can be slaughtered for *Udhiyah*?

A: Camels, goats and cattle and nothing else. In all these the animal must have completed at least a year except for a sheep in which case a *Jaza* ' [six month old] is allowed. Goats of any of its three categories are allowed.

Question 2071) Can the meat of the *Udhiyah* be eaten and stored?

A: One may eat of it and feed rich and poor and store it. It is Mustahabb that at least a third be given in charity.

¹⁰¹ The animal which has lost most of its sight is also not allowed. It is recognised by how it approaches offered fodder. The detail of this is in al-Hidayah. Refer to it.

Question 2072) What must be done with the hide of the Udhiyah?

A: It can be given in charity or made into utensils such as sieves, water-bags etc.

Question 2073) Must one slaughter oneself or may one appoint an agent to slaughter?

A: It is best to slaughter by oneself if one is capable. It is also permissible for someone else to slaughter with one's permission.

Question 2074) What is the ruling if someone ordered a Kitabi to slaughter on his behalf?

A: It is Makruh, but the Wajib is fulfilled.

Question 2075) Two men each bought a sheep for Udhiyah. There was a mix up and each slaughtered the other's sheep. Have their Udhiyah been fulfilled?

A: Yes, there is no liability against them.

Kitabul Ayman wan Nuzur ***[Oaths and vows]***

Question 2076) What is Ayman?

A: The plural of *yamin* [oath]. It literally means wound or strength. Technically it refers to strengthening one of two angles to some statement by means of an oath. This oath is called *yamin* because the one who takes the oath strengthens by oath to do something or leave something.

Question 2077) What are the types of oaths?

A: There are three – *Ghamus* [immersion], *Mu 'aqidah* [in effect] and *Laghw* [futile].

Al-Ghamus is to take an oath about a passed event and deliberately lying about it e.g. "By Allaah, I did not do it," whereas he did do it. This is a major sin. It is called *Ghamus* because it immerses its perpetrator in sin and leads to Jahannum (Hell). Rasulullaah ﷺ said, "The major sins are to associate partners with Allaah, disobey parents, and *al-yamin al-ghamus*."¹⁰²

There is no Kaffarah upon the perpetrator. Instead, he should repent and seek forgiveness.

Al-Mun'aqidah is take an oath about a future action, either to do it, or to refrain from it. If the oath is broken Kaffarah is compulsory.

Al-Laghw is to take an oath about a passed event, believing the oath to be true, but the reality was different. We hope that Allaah will not take the perpetrator to account for this kind of oath.

Question 2078) You have mentioned that Kaffarah is payable in the event of *al-Ghamus*. Is this only when it was done deliberately or in all scenarios?

A: It is payable in all scenarios, whether deliberately, absentmindedly or by force.

Question 2079) A man did not intend to take an oath, but was forced to. He then broke the oath. What is the ruling?

A: He must still pay Kaffarah.

What establishes an oath and what does not

Question 2080) What are the circumstances in which it will be deemed that a Muslim made an oath?

A: It is an oath if he swore by Allaah or any of His Names, such as "ar-Rahman" and "ar-Rahim," or by an attribute of His Being, such as, "The Honour/ Majesty/ Greatness of Allaah." However, "By the Knowledge of Allaah," is not deemed an oath.

Question 2081) What is the status of swearing, "By the anger/ displeasure of Allaah,"?

A: That is not deemed an oath.¹⁰³

Question 2082) Has he taken an oath if he says, "If I did so, then may the anger/ displeasure of Allaah be upon me."?

A: No.

Question 2083) How does one make an oath by Allaah and His Attributes?

A: By applying *huruful qasm* [letters of oath] upon what one swears by.

Question 2084) What are these letters of oath?

A: They are three *Waw* [*wAllaahi*]; *Ba* [*billahi*] and *Ta* [*tAllaahi*]. The letters can also be hidden if applied in the meaning, eg. "Allaahi I shall do so."

Question 2085) Is it an oath if he says, "*Wa Haqqillahi* – by Allaah's Right,"?

¹⁰³ That is customarily not deemed an oath.

A: According to Imaam Abu Hanifah رحمته الله no.

Question 2086) Which words constitute oaths?

A: "*Uqsimu/Aqsimu billahi*" I swear by Allaah, "*Ash-hadu/ Ush-hidu billah*" I testify by Allaah, "*Wa 'Ahidillah/ Mithaqihi*" By the pact/covenant of Allaah.

Question 2087) What is the ruling if he swears by Allaah and adds *InshaAllaah* [if Allaah wills]?

A: If he said it immediately after the oath then does contrary then he has not violated the "oath."¹⁰⁴

Question 2088) Is it an oath if he says, "If I do so then I am a Jew/ Christian/ Fire-worshipper/ Polytheist,"?

A: Yes, it is an oath. Kaffaraḥ is liable if he breaks it.

Question 2089) Is it an oath if he says, "If I do so then I am an adulterer/ wine-drinker/ usurer,"?

A: No.

Question 2090) What is the ruling of swearing by anything besides Allaah, such as by Rasulullaah ﷺ, the Quraan or the Ka'bah?

A: Swearing by any besides Allaah does not constitute a valid oath and is in fact *Shirk*.¹⁰⁵

¹⁰⁴ Ibn 'Umar رضي الله عنه narrates that Rasulullaah ﷺ said, "He who who swears an oath then adds *Inshaallah* will not have contravention of oath against him." [at-Tirmizi and Abu Dawud]
¹⁰⁵ Rasulullaah ﷺ said, "He who swears by anything besides Allah has committed *Shirk*." [at-Tirmizi and Abu Dawud]

Question 2091) A man swore to sin, e.g. "By Allaah, I shall not pray Salah/ I shall never speak to my father/ I shall commit murder." What should he do?

A: Resolve to sin is a sin in itself. He who swears to sin is amongst the worst sinners. Nevertheless he may not commit the sin he swore to. He should break the oath and pay Kaffarah.¹⁰⁶

Question 2092) A man declares forbidden upon himself something which he is capable of. Does it become Haram?

A: No, if he uses it he should pay Kaffarah.

Question 2093) What is covered by the saying, "Everything Halal is Haram upon me,"?

A: In custom it covers food and drink, unless he intended something else.

Question 2094) A Kafir made an oath he then embraces Islaam. Does he have to pay Kaffarah if he broke the oath before or after embracing Islaam?

A: The Shari'ah does not recognise his oath. There is no Kaffarah.¹⁰⁷

Question 2095) A man vows to do an act which he is incapable of, e.g. "I shall climb up to the sky/ I shall turn this rock into gold." Does this count as an oath? If so, when will the oath be regarded as violated?

¹⁰⁶ 'Awf bin Malik narrates from his father: I said, "O Rasulullaah, what if I used to go to my cousin and ask him and he refused me and did not maintain ties with me. He then had a need and came to ask of me. I had vowed not to give or maintain ties with him." He ordered me to give what is good and pay Kaffarah for my oath. [an-Nasai and Ibn Majah]

¹⁰⁷ An oath entails honouring Allah, which is lacking in a state of Kufr. [al-Hidayah]

A: The oath is established and immediately deemed violated.

Question 2096) A man vowed to go to al-Busrah and did not go until he died. At what point is the vow deemed violated?

A: At the last moment of his life.

Oaths about speech

Question 2097) A man vowed not to speak. He then recited the Quraan in Salah. Is the oath broken?

A: No.

Question 2098) A man vowed not to speak to someone for a *Hin/ Zaman* [while]. How long is that?

A: Six months?

Question 2099) And if he vowed for a *Dahr* [era]?

A: According to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammed رحمہ اللہ it is also six months. Imaam Abu Hanifah رحمہ اللہ did not decide, and said, "I do not know what *Dahr* is."

Question 2100) And if he vowed not to speak for "days"?

A: It is three days if said as a common known. If however he made it a proper noun, "the days," then it is 10 days according to Imaam Abu Hanifah رحمہ اللہ and the days of a week according to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammed رحمہ اللہ.

Question 2101) What do the three Imams say about an oath not to speak for "months"?

A: According to Imaam Abu Hanifah رحمته الله it is 10 months. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is 12 months.

Question 2102) A man vowed not to speak to another. He then spoke to him at a distance where he would be able to hear, but was sleeping. What is the ruling?

A: The oath has been violated.

Question 2103) A man vowed not to speak to someone without his permission. He granted permission. The one making the vow did not know about the permission but spoke to him anyway. Is the oath broken?

A: Yes.

Question 2104) A man vowed not to speak to "the owner of this shawl." The owner then sold it and the man spoke to him. Has his vow been broken?

A: Yes.

Question 2105) A man vowed not to speak to, "this youngster." He then spoke to him when he became an old man. Has his vow been broken?

A: Yes.

Question 2106) A man vowed not to speak to a certain person's wife." That person then divorced her and he spoke to her. Has his vow been broken?

A: No.

Question 2107) A man vowed not to speak to a certain person's slave or enter his house. The person then sold the slave and the man spoke to him, or he sold the house and the man entered it. Has his vow been broken?

A: No.

Oaths concerning food and drink

Question 2108) A man vowed not to eat *ghada*, 'asha or suhur. What is meant by these?

A: *Ghada* is a meal from dawn until dawn, 'asha is a meal from noon until half the night, and suhur is a meal from half the night until dawn.

Question 2109) A man vowed not to eat bread. What does "bread" entail?

A: The vow will cover whatever bread the people of his land are used to. Thus if a man of Iraq eats *Qataif* [small triangular] or rice-bread, then his vow is not broken.¹⁰⁸

Question 2110) A man vowed not to eat of "this wheat." He then ate the bread made from it. Is his vow broken?

A: Not according to Imaam Abu Hanifah رحمته الله, who says that it is only violated if he eats the actual wheat.¹⁰⁹

Question 2111) A man vowed not to eat of "this flour." He then ate the bread made from it. Is his vow broken?

A: Yes.¹¹⁰

¹⁰⁸ If he however eats it in Tabaristan where it is usual, then it is violated. [al-Hidayah]

¹⁰⁹ According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله it is violated because eating the bread is the understood meaning of eating the wheat. According to Imaam Abu Hanifah رحمته الله wheat is also directly consumed.

¹¹⁰ Because flour is not edible in itself. Hence the vow is interpreted to refer to the bread.

Question 2112) Is the oath violated if he swallows the flour?

A: No.

Question 2113) He vowed not to eat cooked food and ate cooked lentils or legumes. What is the ruling?

A: The oath is only violated by eating cooked meat, nothing else.¹¹¹

Question 2114) A man vowed not to eat heads. He then ate a sparrow's head. Is the vow broken?

A: No, because "heads" refer to that which is generally baked in ovens and sold in cities.

Question 2115) A man vowed not to eat roast. He then ate roast meat/ eggplant/ carrot. What is the ruling?

A: The oath is violated by eating the roast meat, not the roast eggplant and carrot.

Question 2116) A man vowed not to eat of "this wheat foetus." The foetus then was born and grew into a ram. He then ate the ram. Is his vow broken?

A: Yes.

Question 2117) A man vowed not to eat of "this date-tree." He then ate of its branches or roots. Is his vow broken?

A: The vow is interpreted according to custom to refer to the fruits. If he eats any other part of the tree then the vow is not broken, only if he eats the fruit.

¹¹¹ Because that which is cooked refers to meat.

Question 2118) A man vowed not to eat of "this unripe dates." He then ate the dates after they ripened. Or he vowed not to eat unripe dates and ate ripe dates. Is his vow broken?

A: No.

Question 2119) A man vowed not to eat unripe dates. He then ate unripe dates starting to ripen. Is his vow broken?

A: According to Imaam Abu Hanifah رحمته الله his vow is broken.

Question 2120) A man vowed not to eat "meat." He then ate fish. Is his vow broken?

A: No.¹¹²

Question 2121) A man vowed not to drink from the Tigris River. He then drank its waters from a vessel. Is his vow broken?

A: According to Imaam Abu Hanifah رحمته الله it is not broken unless he places his mouth in the river.¹¹³

Question 2122) A man vowed not to drink from the water of the Tigris River. He then drank its waters from a vessel. Is his vow broken?

A: Yes.

Oaths concerning entering, leaving and staying

Question 2123) A man vowed not to enter a *dar* [house]. He entered a ruin. Is his house broken?

¹¹² Although according to the juristic principle of *Qiyas* it is violated because the Quran calls fish "meat," fish flesh is not meat in the sense of that flesh which is made from blood because fish do not have blood.

¹¹³ According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله it is violated with or without a vessel.

A: No.

Question 2124) A man vowed not to enter "this *dar* [house]." It was destroyed and completely levelled. He then entered the land. Is the vow broken?¹²⁴

A: Yes.

Question 2125) A man vowed not to enter "this *bayt* [house]." It was destroyed and completely levelled. He then entered the land. Is the vow broken?

A: No.¹²⁵

Question 2126) A man vowed not to enter a house in which he is. He does not leave immediately, but remains standing or sitting there for a while. Is the vow broken?

A: No, it is only broken if he *enters* after exiting.

Question 2127) A man vows not to enter a house. He enters the Ka'bah, a Masjid, church or synagogue. Is his vow broken?

A: No.¹²⁶

Question 2128) A man vowed not to enter "this house." He then stood on its roof or entered its *Dihliz* [foyer]. Is his vow broken?

A: Yes, however if he stood in the doorway in a manner whereby if the door is closed he is outside, then he has not broken the vow.

Question 2129) A man vowed not to live in "this house." He himself left it, but left his family and goods behind in it. Is his vow broken?

¹²⁴ Dar includes the land.

¹²⁵ Bayt necessitates a building where the night can be spent. Thus if the roof has collapsed and the walls remain, the vow will be violated as one can spend the night there.

¹²⁶ Houses are for personal habitation unlike these buildings.

A: Yes.¹²⁷

Oaths concerning buying, selling and hiring

Question 2130) A man vowed not to buy, sell or hire. He appointed an agent to do these acts for him. Is his vow broken?

A: No.

Oaths concerning sitting and sleeping

Question 2131) A man vowed not to sit on the earth. He then sat on a mat or blanket. Is his vow broken?

A: No.¹²⁸

Question 2132) A man vowed not to sit on a seat. He then sat on a seat covered with a blanket. Is his vow broken?

A: Yes.¹²⁹

Question 2133) If he places another seat on top of the seat and sits on it?

A: His oath is not broken if he specified that he will not sit on that particular seat at the bottom.

¹²⁷ By custom he is said to be inhabiting the house if his family and goods are there.

¹²⁸ Since he is not regarded as sitting directly on the earth. However, if the only barrier is his clothing, then that is insufficient and his vow is broken. [al-Jawharah]

¹²⁹ Because he is deemed sitting on the seat.

Question 2134) A man vowed not to sleep on a bed. He then slept on bed covered with a bed sheet. Is his vow broken?

A: Yes, if however he had placed another bed on top of the vowed bed and slept on the top bed then the vow is kept.

Oaths concerning permission to leave

Question 2135) He vowed that his wife may not leave without his permission. He granted her permission once. She left and returned. She then left a second time without explicit permission. Is his vow broken?

A: Yes, his vow is broken if his words were as above. If however he had vowed whilst speaking to her, "By Allaah, you may not leave unless I permit you to," then if he permits her even once and she goes and returns and leaves again, his vow is intact.

Oaths concerning dressing, riding and arriving

Question 2136) A man vowed not to ride a certain person's mount. He then rode on that person's slave's mount that had been permitted to trade. Is his vow broken?

A: No.

Question 2137) A man vowed not to ride an animal he was riding at that moment, or not to wear attire he was dressed in at that moment. Is his vow broken?

A: If he immediately dismounts/ disrobes that attire then the vow is kept. If however he stays on the beast or keeps that clothing on then

the vow is broken. His continuation of riding/ wearing is deemed a new ride/ dressing.

Question 2138) A man vows to go to someone "if he is able to." What is meant by this?

A: It means his capability according to his health and removal of all obstacles. It does not entail whether Allaah decrees his coming or not.

Oaths concerning settlement of debts

Question 2139) A man vows: "I shall certainly pay him the debt owing today." He finds the creditor and pays him. The creditor discovers that some of the coins are alloyed and some are rejects and some are genuine. Is the vow fulfilled?

A: Yes.

Question 2140) If they are lead or *Suttuqah* [copper covered silver]?

A: His vow is broken.

Question 2141) What is meant if he vows to pay his debt "shortly" or "after a long time"?

A: Less a month is "shortly." More than a month is "a long time."

Question 2142) A man vowed not to take his debt in instalments. He then took part payment. Is the vow broken?

A: Not by just taking part payment. If however he takes the whole amount in instalments then it is broken.

Question 2143) He made the above oath and then took the amount whereby it was weighed in two weighings. What is the ruling?

A: If he does not engage in any other act between the weighings besides weighing, then the oath is intact. If he does something else in between then it is broken.

NOTE: A ruler summons a man and makes him vow to inform the ruler of whatever corruption enters the land. This oath is specific to his rule. If the ruler loses his post the man's oath is not broken by not informing him.

WARNING:

1. If a man vows, "By Allaah I shall do that act," his vow is fulfilled if he does so once in his life. If he sets a condition of time or place then it must be done according to that condition or else he has violated the oath. If he vows not to ride someone's animals and he rides it his oath is broken, but not if he rides someone else's animal.
2. If he vows not to do something, "I shall not do that act," then he must avoid it for the rest of his life. If he does it even once then his oath is broken.

Nazr [Pledge to Allaah]

Question 2144) A man says, "There is a *nazr* on me/ for Allaah." He does not mention *what* he has pledged. What is the ruling?

A: Although the words are *nazr* the meaning is *yamin* [oath]. Kaffarah of *yamin* is payable.¹²⁰

Question 2145) What is the ruling if someone made *nazr* and mentioned what he pledged?

A: If he did not mention a condition fulfilling the *nazr*, then he must fulfil whatever he pledged to do, e.g. "For Allaah I shall fast a month/ perform Hajj/ pray two Rak'at."

¹²⁰ 'Uqbah bin 'Amir narrates that Rasoolullah ﷺ said, "Kaffarah of *nazr* is the kaffarah of *yamin*." [Abu Dawud]

Question 2146) If he attaches a condition to the *nazr* what is the ruling, e.g. "If Allaah cures me/ if my son comes then I shall fast/ pray/ perform Hajj/ free a slave," etc.

A: It is Wajib to fulfil in this case also because the words of the ayah are general, "And they fulfil their *nazr*."

It is narrated that Imaam Abu Hanifah رحمہ اللہ said, "If someone makes *nazr*, 'If I do so then I have to make Hajj or fast a year,' kaffarah of *yamin* will suffice him."

This is also the view of Imaam Muhammed رحمہ اللہ.

Question 2147) What if a man made a *nazr* to disobey Allaah?

A: He may not perform the sin because of the *nazr*. Instead he should pay kaffarah as in violated oaths.

Question 2148) A man made *nazr* to give his wealth in charity. What does he have to give?

A: He has to give whatever wealth category in which Zakah is compulsory upon him.

Question 2149) A man vows to give in charity whatever he owns. What must he give?

A: He must give whatever he owns but may retain an amount needed to maintain himself and his dependants until he can earn more money. Once he has earned more he must give an amount equivalent to the amount he had retained.

Kaffarah of oaths

Question 2150) What is the Kaffarah for breaking an oath?

A: Allaah has explained it in the Quraan as follows, "Allaah will not punish you for unintentional oaths, but will punish you for

deliberate oaths. Its Kaffarah is that you feed ten poor people of the average food you feed your family, or clothing them, or freeing a slave. He who does not find, should fast three days. That is the Kaffarah of when you make oaths [you do not fulfil]. Guard your oaths. Thus Allaah explains your signs that you may be grateful." [al-Maidah:89]

Thus one has a choice between feeding ten poor people of the average food one feeds one's family, or clothing them, or freeing a slave. If one is unable to do any of these, then one must fast three consecutive days.

Question 2151) If one wishes to feed, how should it be done?

A: Feed ten poor people lunch and supper so that they are satiated; or give each of them a half Sa' of wheat or a full Sa' of barley or dates.

Question 2152) Is the Kaffarah fulfilled if he gave each the value of a half Sa' of wheat or a full Sa' of barley or dates?

A: Yes.

Question 2153) How would he clothe them?

A: Give each of the ten poor at least that which wherein Salah would be valid.¹²¹

Question 2154) Which slave will suffice as Kaffarah?

A: A healthy, intact slave must be freed as described in kaffarah of Zhihar.

¹²¹ According to According to Imaam Abu Hanifah رحمہ اللہ and Imaam Abu Yusuf رحمہ اللہ a trouser will not be enough as the wearer is still considered uncovered.

Question 2155) You have mentioned that if he is incapable of paying the any of the above three, he must fast three consecutive days. The Quraan does not stipulate that it be consecutive. What is your proof for that?

A: According to the recitation of 'Abdullah bin Mas'ud رضی اللہ عنہ it is, "... fasting of three consecutive days..."

Question 2156) A man made an oath and wished to break it. He first paid the kaffarah and then broke the oath. Is he still liable?

A: Yes, he is liable to pay it a second time after breaking the oath.

Kitabud Da'wa [Claims]

Question 2157) What is *da'wa* literally and in Shari'ah?

A: Etymologically it is on the scale of *fa'la*. It means to attribute something to oneself. In Shari'ah it refers to attribution of something to oneself at the time of a dispute. In grammar it is used on the scale of *ifti'al*.

Question 2158) Who is the *mudda'i* [claimant]?

A: The party which cannot be forced to continue the dispute is abandoned.

Question 2159) Who is the *mudda'a 'alayhi* [defendant]?

A: The party which can be forced to continue the dispute [at court].

Question 2160) If a man makes a claim against another, will the court accept his mere claim?

A: No, the *mudda'i* must mention something about the type and quantity of the goods. If it is a specific item that he claims, then the *mudda'a 'alayhi* must present it at court where the *mudda'i* will point at it and make his claim. If the object is not present then the *mudda'i* will mention its value. If it is land he claims, he will define its boundaries and mention that it is in the hands of the *mudda'a 'alayhi* and that he is claiming it. If it is a right which the *mudda'a 'alayhi* must fulfil then he will mention it and say, "I am claiming this from him."

Question 2161) What will the judge do once the claim is established?

A: The judge will then question the *mudda'a 'alayhi*. If he confesses, then the judge will rule according to the *mudda'i*'s claim. If he denies the claim, the judge will ask the *mudda'i* to produce evidence. If he can present the evidence and witnesses he will receive the ruling in his favour. If he is unable to present evidence, and demands an oath-taking, the judge will first make him take an oath. If the *mudda'a 'alayhi* takes an oath to the contrary the judge will refuse the claim. If the *mudda'a 'alayhi* refuses to take the oath the judge will rule in the *mudda'i*'s favour. It is appropriate for the judge to first say, "I shall present the oath-taking to you thrice. If you take it, well and good. If you refuse to, I shall rule against you according to what he claims." If he then refuses after the presentations, the judge will rule against him.

Question 2162) The judge demands that the *mudda'i* present his evidence. He replies, "I have evidence, but I want you to take an oath from the *mudda'a 'alayhi* about it." Can the judge accept his request?

A: According to Imaam Abu Hanifah رحمته الله he may not demand the oath when he has evidence.

Question 2163) The *mudda'a 'alayhi* refused to take the oath. Will the *mudda'i* have to take the oath again?

A: No.

Question 2164) Are there any matters about which the denier will not take an oath about?

A: The denier will not take an oath on the following claims – marriage, retracting a divorce, *Fayy, Ila*, slavery, being Ummul Walad, lineage, Wala, *Hudud, Li'an*.

Question 2165) Two men claimed the same item which is in the hands of a third party. Each claims to be the owner and presents evidence to that effect. What will the judge do?

A: He will allocate it to both of them.

Question 2166) What is the ruling if two men both claim to be married to the same woman and produce evidence to that effect?

A: He will accept neither of their evidence and will seek the woman's verification.

Question 2167) If two men both claim that they had bought a specific slave from a third party, and they produce evidence, what will the judge do?

A: Each may either accept half the slave in exchange for half the price, or leave it. If the judge had ruled accordingly and one of the two says, "I do not want half a slave. I want to rescind the sale," then the other may not take the entire slave. If both claimants define a date of sale, then the slave is for whichever claimed the earlier date. If neither can produce a date but the slave is already in the possession of one of them, then the possessor keeps the slave.

Question 2168) One man claims to have bought from a third party and another claims that that was gift to him from the third party. Both have taken possession from the third party. Neither can produce a date of sale or evidence. Who keeps the goods?

A: The one claiming a sale.

At-Tashil ad-Daruri (Part 2)

Question 2169) A man claims that he bought an item from another. A woman claims instead that he had married her for that as dowry. Both produce evidence. What is the ruling?

A: Both claims are equal. None will be preferred over the other.

Question 2170) The one claims an item is collateral from Zayd and the other that it is a gift from Zayd. They take possession and both produce evidence. What is the ruling?

A: The claim of collateral will be given preference.

Question 2171) If two parties who have not taken possession, make a general claim of ownership and produce different dates of ownership, whose claim will be accepted?

A: The one with the earlier date.

Question 2172) If both claim to have bought it from a third party and both produce different dates, whose claim will be accepted?

A: The one with the earlier date.

Question 2173) If both claim to have bought it from a third party and both produce the same date, whose claim will be accepted?

A: Both's claims will be equally valid. Neither will be preferred over the other.¹²²

Question 2174) One claimant does not have the item in his possession. The other claimant does. The first produces a date of ownership and the second produces an earlier date. Whose claim will be preferred?

A: The one with the earlier date.

¹²² i.e. they will share it 50-50. [Sharhul Kanz (3119/4)]

At-Tashil ad-Daruri (Part 2)

Question 2175) Two men both claim to own a beast and produce evidence that they owned it from its birth. The one has it in his possession and the other does not. Whose claim will be preferred?

A: The one who has it in his possession.

Question 2176) Two men both claim to own a cloth and produce evidence that they owned it from its time of embroiding. The one has it in his possession and the other does not. Whose claim will be preferred?

A: The one who has it in his possession is preferred in cloths which are only embroidered once. Similarly any item whose cause of ownership occurs only once is treated the same in the above scenario.

Question 2177) The one who does not have possession produces evidence of general ownership. The one who has it in his possession produces evidence that he bought it from him. What is the ruling?

A: The one who has it keeps it.

Question 2178) Two men each claim to have bought an item from each other and produce evidence to that effect. They have no dates. What is the ruling?

A: The court will not decide between them. Both evidences will be rejected.

Question 2179) One claimant produces two witnesses and the other produces four. Will the first be preferred?

A: No, both are still equal.

Question 2180) A man claims Qisas [retaliation] but the *mudda'a* 'alayhi denies it. How will this case be decided?

A: The *mudda'a 'alayhi* will be made to take an oath. If he refuses and the retaliation is for something besides life, he will be retaliated against. If it is a case of life, then he will be detained until he either confesses or takes the oath. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he must pay *Arsh* in both cases.

Question 2181) The *mudda'i* says, "I have evidence in the city which I shall present *InshaAllaah*." What should the judge do?

A: The judge will order the defendant to give a *kafil* for his life for three days. If he does so, well and good, or failing which he will order the *mudda'i* to follow him, unless he is a traveller. In that case he will follow him for the duration of the court session.

Question 2182) A man claims an item from another. The *mudda'a 'alayhi* says, "This item a third party left as *Wadi'ah/ Rahn* by me/ I usurped it from a third party." What is the ruling?

A: If the *mudda'a 'alayhi* can produce evidence to that effect then the dispute between them will no longer be entertained.

Question 2183) If the *mudda'a 'alayhi* however says, "I bought it from a third party," does the claim of the *mudda'i* remain?

A: Yes.¹²³

Question 2184) A man claims, "He stole that item from me," and produces evidence for that. The *mudda'a 'alayhi* says, "He left it as *Wadi'ah* by me," and produces evidence for that. Is the case dropped by the defendant's evidence?

A: No.

¹²³ Because the *mudda'a 'alayhi* has in effect acknowledged that the claimant had ownership in the item.

Question 2185) A man has an item in his possession and claims that a certain person left it as *Wadi'ah* in his care. Another man claims that he bought it from the same man. What is the ruling?

A: The case between them is dropped if there is no evidence.

Two men claiming a house

Question 2186) A house is in the possession of a man. A second man claims that the entire house is his. A third man claims that half the house is his. Both produce evidence. What is the ruling?

A: According to Imaam Abu Hanifah رحمته الله the second man gets three-quarters and the third man gets a quarter. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the second gets two-thirds and the third gets a third.

Question 2187) If the house is instead in the hands of the two claimants, with their claims as above?

A: Half will be ruled for the claimant of the entire house by way of a court order, and the other half will be said to be his without a court order.

Two men claiming a beast

Question 2188) Two men claim an animal. Both produce evidence that the animal was born in their possession. They also produce dates. In whose favour will the court rule?

A: The one whose date corresponds with the age of the animal. If that is indeterminate then it will be shared between them.

Question 2189) What is the ruling if one disputant is mounted on the beast and the other grabbing the bridle?

A: The rider's claim will be given preference.

Question 2190) Two men claim a beast of burden. The one has a load on the beast and the other only has his claim. Whose claim is preferred?

A: The owner of the load.

Two men claiming a shirt

Question 2191) Two men claim a shirt. One is wearing it and the other is grabbing onto the sleeve. Whose claim will be preferred?

A: The one wearing it.

Claims of a buyer and seller

Question 2192) How are disputes regarding price and commodity between buyers and sellers settled?

A: There are various scenarios, with different rulings:

1. When the seller claims a higher price than the buyer admits to, or the buyer claims a greater quantity of the commodity than the seller admits to; whichever produces evidence will have the ruling in his favour.
2. If both produce evidence, then the ruling will be according to the greater amount.
3. If neither can produce evidence then the buyer will be told, "Either accept the price the seller claims or the sale is cancelled." The seller will be told, "Either accept the quantity the buyer claims or the sale is cancelled." If neither wishes to concede, then each will have to take an oath concerning the other's claim. The buyer will begin taking the oath. Once both have taken their oaths, the court will rescind the sale. If one of them refuses to take the oath, the court will rule in favour of the other's claim.

4. If the dispute is about the time given for payment, or *Shartul Khiyar* then there is no mutual oath taking. The word of the one who denies the time given or the option of rescinding will be accepted, but he must take an oath.
5. If the commodity perishes and they dispute the price, then they will not take oaths according to Imaam Abu Hanifah رحمته الله and Imaam Abu Yusuf رحمته الله. The price which the buyer claims will be accepted. According to Imaam Muhammed رحمته الله both will take oaths and the sale will be cancelled based on the market value of the commodity.
6. If one of two slaves perished, and they dispute the price, they will not take oaths according to Imaam Abu Hanifah رحمته الله, unless the seller agrees to give up his claim on the perished slave. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله, both will take oaths. The sale with reference to the surviving slave is cancelled and the perished slave is valued at market price.

Claims of spouses

Question 2193) How are disputes between the spouses regarding dowry settled?

A: There are different scenarios as follows:

1. The husband claims that the dowry is 1,000 and the wife claims that it is 2,000. The claim of whoever can produce evidence will be accepted.
2. If both produce evidence, then the wife's word will be taken.
3. If neither has evidence, then they will take oaths according to Imaam Abu Hanifah رحمته الله. The marriage will not be cancelled. The ruling will be based on *Mahr al-Mithl*. If that is equal or less than the amount the husband stated, then the ruling will be according to his claim. If it is equal or more than what she said, then the ruling will be according to her claim. If *Mahr al-Mithl* is more than her amount and less than her amount then the ruling will be *Mahr al-Mithl*.

Question 2194) The couple disagree on household commodities. How will the dispute be settled?

A: What is appropriate for men¹²⁴ is for the husband and what is appropriate for women.¹²⁵ is for the wife. What is appropriate for both is for the man. This is if they dispute and both are still living. If one has died and the dispute is with the heirs, then what is appropriate for men and women is for the surviving one of the two. This is all according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Abu Yusuf رحمته الله the woman is given that which a woman like her prepares with, and the remainder goes to the husband under oath.

Claims on hiring

Question 2195) How are disputes between the claims of the hirer and the hired resolved?

A: There are several scenarios here as well:

1. If they dispute about the fee before the fulfilment of what was agreed upon, then both will take oaths and cancel the agreement.
2. If they disagree after the fulfilment then they will not take mutual oaths. The hirer's word will be taken under oath.
3. If they disagree after partial fulfilment, then both will take oaths and the remainder of the contract is cancelled. The past fulfilment will be according to the word of the hirer under oath.

Disagreements between the Owner and the Mukatab regarding the Mukatabah wealth

Question 2196) The owner and the Mukatab dispute the amount payable for the Kitabah. Whose word is accepted?

¹²⁴ Such as turbans, horses, bows and weapons.
¹²⁵ Such as silken clothing.

A: According to Imaam Abu Hanifah رحمته الله they will not both be put to oath. The Mukatab's word will be accepted under oath. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله they will both be put to oath and the Kitabah cancelled.

Claims of lineage regarding a slave-girl giving birth after her sale

Question 2197) A man sold a slave-girl. She gave birth whilst in the buyer's possession. The seller claims the child as his own. Will his claim be accepted?

A: If she gave birth within six months of her sale, the child is the seller's and she becomes his Ummul Walad. The sale is rescinded.

Question 2198) Whose child is it if the buyer also claims the child at the same time or after the seller if the child was born within six months of the sale?

A: It is still the seller's.

Question 2199) And if the child was born after six months of the day of her sale?

A: If it was born after six months and less than two years from the date of sale, the seller's claim will not be accepted unless the buyer verifies it.

Question 2200) The child was born less than six months and died. The seller still claims its lineage after death. Will his claim be accepted?

A: Neither the child's lineage nor the mother being his Ummul Walad will be accepted.

Question 2201) The slave-girl gives birth in less than six months and dies. The seller claims the child. Is the lineage recognised?

A: According to Imaam Abu Hanifah رحمته الله the seller will take the child and return the full price. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will only return the proportion of the child.

Question 2202) A slave-girl gave birth to twins. Her owner claims only one of them. Is the lineage of the other negated?

A: No, the lineage of both is attributed to him.

Istihlaf [putting to oath]

Question 2203) How is the *mudda'a 'alayhi* put to oath?

A: There are several details:

1. A Muslim may not be put to oath except in the name of Allaah. The oath may be emphasised with His Attributes. An oath may not be made severe by demanding a specific time or place.
2. A Jew will take an oath in the name of "God who revealed the Torah to Moses."
3. A Christian will take an oath in the name of "God who revealed the Gospel to Jesus."
4. A Fire-worshipper will take an oath in the name of "God who created fire."
5. Oaths will not be taken in their houses of worship.

Scenarios of oath taking

1. Someone claims to have bought that man's slave for 1000. The seller disputed him and they were put to oath. He will say, "By Allaah, there is no established sale with you in this slave," and not, "You did not sell."
2. A man accused of usurpation will say, "By Allaah I am not obligated to return this item, nor to return its price." He will not say, "By Allaah I did not usurp it."

3. Concerning marriage the oath will be, "By Allaah, there is no established marriage between us at present."
4. The oath accepted in divorce is, "By Allaah, she has never been irrevocably divorced from me at any time." He will not say, "By Allaah, I did not divorce her."

Kitabush Shahadat [Arsh]

Question 2204) What is the status of Arsh in Shari'ah?

A: It is Fard for the witnesses to testify, in order that rights are obtained and not lost. They have no right to hide their Arsh when the owner of the right seeks it. Allaah says, "The witnesses should not refuse when called to testify." He also says, "Do not hide Arsh. He who hides it has indeed a sinful heart." This is with regards rights.

Regarding Hudud, the witness may choose between exposing and hiding his Arsh. Hiding is preferred in matters regarding theft of wealth. In that case he should say, "He took the wealth," and not, "He stole the wealth."

Question 2205) Are there degrees of Arsh?

A: Yes:

1. Arsh of Zina requires four male witnesses. The Arsh of females will not be accepted.
2. Qisas and the remaining Hudud require two males. The Arsh of females will not be accepted.
3. Other rights require two male, or a male and two female witnesses, whether in a case of wealth or not e.g. marriage, divorce, agency and bequests.
4. The Arsh of one female is accepted in matters men may not investigate e.g. birth, virginity and defects in women.

Question 2206) Are there conditions for the acceptance of Arsh?

A: Yes, in all these the witness must be 'adil [just] and must use the words, "I testify." If he says, "I know/ I am certain," then the Arsh is not accepted.

Question 2207) Will apparent 'adalah of the witness be accepted or must his public and private life be investigated?

A: According to Imaam Abu Hanifah رحمته الله a Muslim is accepted as 'adil on face-value except in matters of Hudud and Qisas. In these cases he must be investigated just as the allegations of the disputants are investigated. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله a public and secret investigation must be held.

Accepted and rejected witnesses

Question 2208) Are there people who's Arsh is not accepted?

A: Yes, the Arsh of the following is not accepted:

1. A blind person.
2. Slave
3. One lashed for slander, even if he has repented.
4. One may not testify for one's father or grandfather, or son or grandson.
5. A spouse may not testify for the other.
6. An owner may not testify for his freed-slave or Mukatab.
7. A partner may not testify in that which he shares with the partner.
8. Transsexual.
9. Professional mourner.
10. Songstress.
11. An addict who drinks besides wine.
12. One who plays with birds.
13. One who sings to people.
14. One involved in major sins, particularly those associated with a Hadd.
15. One who enters the bath without a lower garment.

16. A consumer of usury.

17. One who gambles with backgammon and chess.

18. One who perpetrates demeaning acts such as urinating in the road and eating while walking.

19. He who vilifies the pious predecessors.

20. A Kafir from the lands of the Kuffar may not testify against a Kafir living under Islaam.

21. Someone who has enmity against another for worldly reasons may not testify against him.

Question 2209) Whose Arsh is accepted?

A: They are as follows:

1. A man may testify for his brother and paternal uncle.
2. The Arsh of deviant sects is accepted¹²⁶ except for the Khattabiyah¹²⁷.
3. A Zimmi may testify against a Zimmi.¹²⁸
4. A sinner whose good outweighs his evil, as long as he avoids major sins.
5. One with a cut penis, one castrated and a one born out of wedlock may testify.
6. Hermaphrodite.
7. A Zimmi may testify against a Mustamin Harbi [Kafir who has obtained safety to enter the lands of Islaam] just as a Muslim may testify against both of them.

NOTE:

1. Arsh which accords with the claim is accepted. If they conflict it is rejected.

¹²⁶ As long as their deviance is not such that they have become Kafir [az-Zayla'i in Sharhul Kanz]

¹²⁷ A Rafidi followers of Abul Khattab Muhammad bin Wahb al-Ajda'. This man of al-Kufah claimed that 'Ali عليه السلام is the greatest god and Ja'far as-Sadiq the lesser god. Governor 'Isa bin Musa executed him by crucifixion.

¹²⁸ Even if their religions differ i.e. amongst Christians, Jews and Magians who pay Jizyah and are protected by the Islamic state.

2. According to Imaam Abu Hanifah رحمته الله regard is given if the testimonies of the two witnesses agree in word and meaning.¹²⁹

Agreement and disagreement amongst witnesses

Question 2210) The witnesses give contradictory Arsh e.g. one testifies "1000" and the other "2000." How is this resolved?

A: According to Imaam Abu Hanifah رحمته الله both testimonies are rejected. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله "1000" is accepted.

Question 2211) One witness testified, "1000," and the other, "1500." The *mudda'i* claims 1500. What is the ruling?

A: Both testimonies will be accepted as 1000.

Question 2212) Both witnesses testified to 1000, but one added, "He did however pay 500 of that." What is the ruling?

A: Both testimonies will be taken as 1000. The payment of 500 will be ignored unless the other also testifies to it. It is appropriate that if the witness does know that, that he does not testify to the 1000 until the *mudda'i* admits to receiving the 500.

Question 2213) Two witnesses testified that Zayd was killed on the Day of Nahr at Makkah. Another two testified that he was killed on the Day of Nahr at al-Kufah. They all testify at the same time. What will the court decide?

A: Both testimonies will be rejected.

¹²⁹ According to Imaam Abu Yusuf رحمته الله and Imaam Muhammad رحمته الله only the meaning is paid attention to.

Question 2214) The first pair testified and the judge ruled accordingly. The next pair then arrives. Will the ruling be rescinded?

A: No, the second Arsh will not be accepted after a decision has been given based on the first Arsh.

Overheard Arsh

Question 2215) Can a witness testify to what he did not himself see?

A: It is not permissible. However, if a reliable person has informed him of the following then he may convey it – lineage, death, marriage, intercourse and appointment of a judge.

Arsh upon Arsh

Question 2216) Does Shari'ah recognise Arsh upon Arsh? What does it entail?

A: A witness can give two forms of Arsh. The first is that by which a ruling can be established in itself. These include sale, hire, marriage, confession, usurpation, murder and a decision of a judge. If he hears or sees these matters he may testify to it if he does not make a secondary witness to it. He will say, "I testify that he sold..." and will not say, "I have been made witness"

The second is it does not establish a ruling in itself. This is Arsh upon Arsh. If he merely hears a witness testifying to something he cannot testify to it unless the primary witness makes him a secondary witness to the Arsh. Similarly if someone hears a primary witness making a secondary witness to a Arsh, the hearer cannot testify. Arsh upon Arsh is permissible in every right which does not become forfeit due to doubt. It is not accepted in Hudud and Qisas. The Arsh of two witnesses from two witnesses is acceptable, but not the Arsh of one from one.

Question 2217) Describe the procedure of making a secondary witness.

A: The primary witness will say to the secondary witness, for example, "Be witness to my Arsh that I testify that so-and-so confessed to me about that, and made me a witness against him." It is permissible if he omits, "He made me a witness against himself."

Question 2218) How will the secondary witness then testify?

A: He will say, "I testify that so-and-so confessed to him concerning ... and he then said to me, 'Testify according to my Arsh that ...' hence I testify to that."

Question 2219) Are there further conditions for the acceptance of secondary Arsh?

A: The secondary witness may only testify if the primary witness died; or has gone away the distance of three days' journey or more; or is too ill to attend the court.

Question 2220) What is the ruling of the secondary witnesses regarding the primary witnesses as 'adil?

A: If they regard them so it is permissible. If they remain silent about their 'adalah then it is also permissible but the judge will examine their state.

Question 2221) When the secondary witnesses intended to testify, the primary witnesses refuted their Arsh. Will the Arsh of the secondary witnesses still be accepted?

A: No.

Retracting Arsh

What does the judge do when witnesses retract their Arsh?

A: There are details to this which you should pay attention to:

1. If the witnesses retract their Arsh before the court rules on it, then their Arsh is forfeit and they have no liability.
2. If the judge had ruled that the *mudda'a 'alayhi* had to pay money based on their Arsh, and they thereafter retract, the decision is cancelled and they are liable to compensate the *mudda'a 'alayhi* for his loss.
3. If one of the two retracts then his is liable for half.
4. Three witnesses testified to a money case. One witness retracts. He does not owe anything. If however two retract, then the two must jointly compensate him for half the amount.
5. A man and two women testified. If a woman retracts then she is liable for a quarter of the amount. If both women retract then they are liable for half.
6. A man and ten women testified. If eight women retract then there is no liability upon them. If a ninth woman retracts, then the retracting women owe a quarter. If the man and women all retract then the man owes a sixth and the women five-sixths according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he owes half the women half.
7. Two witnesses testified that a woman married with *Mahrul Mithl* or more. If they retract then they are not liable. If they testified to less than *Mahrul Mithl* and then retracted, they are not liable for the deficiency.
8. Two witnesses testified that a man married with *Mahrul Mithl* or less. If they retract then they are not liable. If they testified to more than *Mahrul Mithl* and then retracted, they are liable for the excess.
9. If they testify that a commodity was sold at market value or more and then they retract they are not liable. If they testified to less than market value they are liable for the loss.
10. They testified that a man divorced his wife before intercourse. If they retract they are liable for half the dowry. If they retracted after intercourse there is no liability.

11. They testified that a man freed his slave. If they retract they are liable for the value of the slave.
12. They testified to Qisas. The *mudda'a 'alayhi* was executed. They then retracted. They are liable for *Diyah* not *Qisas*.
13. When secondary witnesses retract they are liable.
14. If the primary witnesses retract and say, "We did not authorise the any secondary witnesses," then they are not liable. If they admit, "We authorised them to testify but committed an error," then they are liable.
15. If the secondary witnesses claim that the primary witnesses lied or are mistaken, these claims will be ignored.
16. Four witnesses testified to Zina. Two witnesses testified that the perpetrator has *Ihsan* i.e. will be stoned and not lashed. If these two witnesses retract after the stoning they are not liable.
17. When those who have declared the witnesses reliable retract they are liable.
18. Two witnesses testify that an oath was taken. Another two testify that there was a condition as well. They then retract. Liability is only on the witnesses to the oath.

Sundry regulations

1. The judge will not entertain claims of the defendant that the witnesses be rejected [after having made his own investigations] nor negative Arsh [unless it is relevant to the case e.g. he has no other heir besides this man] and he will not rule according to that.
2. According to Imaam Abu Hanifah رحمته الله a false witness will be exposed in the market and not physically punished. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will be beaten and imprisoned.
3. The witness is not allowed to read ones letter and testify except when he knows the testimony.

Kitab Adabil Qadi [Court etiquette]

Question 2222) Is it permissible to join the judicial system?

A: There is no harm in it if one can fulfil one's duty with justice. It is Makruh for one who fears that he will be weak in fulfilling the legal duties or that he will not be able to be impartial. It is not appropriate to desire or seek a judicial post. A judicial appointment is not valid if the appointee does not fulfil the prerequisites of Arsh¹³⁰ and that he be capable of Ijtihad¹³¹.

Question 2223) When a judge is appointed, what does a judge do with those prisoners whom the previous judge had detained?

A: The register of the previous judge is given to him. He will examine the cases of the prisoners. Those who confess will continue their sentences. As for those who plead innocent the word of the previous judge will not be accepted without evidence. Even if there is no evidence, the new judge will not hasten to release them. He will make an announcement and examine the case just as he will, regarding Wadi'ah and Awqaf. He will then act according to the evidence at hand or he who has them in his possession admits to them. The mere word of the previous judge will not be accepted unless the one who holds them admits that the previous judge had handed them to him, in which case his word will be accepted.

Question 2224) Mention some of the characteristics the judge will adopt during his tenure.

A: He will sit openly for passing judgement in the Masjid. He may not accept gifts except from Mahram blood relatives or from such people with whom he used to have a relationship of exchanging gifts

¹³⁰ Sanity, adulthood, freedom, 'a'm and justice.

¹³¹ This condition is one of preference [not obligatory] – al-Hidayah

before being appointed. He may not accept invitations, except those which are general. He must attend funerals and visit the sick. He may not host one party of disputants and exclude the other. When both parties attend court, he will treat them equally in seating and in giving them attention. He will not speak secretly to one of them. He will not pass hints to him. He will not lead him on in presenting his proofs.

Question 2225) Will the judge detain the *mudda'a 'alayhi* if found guilty?

A: If the *mudda'i* demands his right the judge should not hasten to detain the *mudda'a 'alayhi*. He should order him to pay what he owes. If he refuses the judge will detain him for any liability which was incurred by acquiring wealth in his hands such as the price of goods or loans; as well as for any debt incurred by transaction, such as deferred dowry and Kafalah. He may not be detained for other liabilities if he says he is poor.

Question 2226) Will his mere claim of being poor be accepted or will his condition be investigated?

A: If his creditor can prove that he has wealth he will be detained for two to three months. Thereafter he will again be questioned. If no wealth is revealed he will be released. His creditors will not be prevented from approaching him.

Question 2227) Can a man be imprisoned for not paying his wife's maintenance?

A: Yes.

Question 2228) Can a father be imprisoned for the debts of his son?

A: Only if he refused to pay the Wajib maintenance of his child.

Question 2229) The ruler appointed a female as judge of a district. Is the appointment valid?

A: Yes, except in matters of Hudud and Qisas.

Question 2230) Can sentence be passed on someone who is absent?

A: No, unless a representative is present.

Question 2231) If the decision of one judge is taken to another, can he implement the decision?

A: He may, unless the decision conflicts with the Quraan, Sunnah or Consensus of the 'Ulama or is without proof.

Question 2232) Can the judge appoint a deputy in his absence?

A: No.

Question 2233) What is the status of a judge's ruling concerning his parents, children and wives?

A: It is void.

Arbitration

Question 2234) Two men have a dispute. They appoint a third party as arbitrator between them. They accept his decision. Is this permissible?

A: It is permissible if arbitrator has the attributes of decision-making. Thus the following may not arbitrate – a Kafir, slave, Zimmi, one lashed for slander, an open sinner and a minor.

Question 2235) They appointed an arbitrator. One or both of them wish to withdraw from the arbitration. Is this permissible?

A: They can withdraw before a decision has been passed. Once a decision is passed it is binding.

Question 2236) The arbitration decision was referred to the judge. Can he implement it?

A: If in accord with his views, or else he can annul it.

Question 2237) Can the arbitrator examine evidence and pronounce a decision if a party refuses to take an oath?

A: Yes.

Question 2238) Two men appointed an arbitrator regarding an accidental murder. The arbitrator ruled that the 'Aqilah must pay Diyah. Will his decision be implemented?

A: No.

Letter from judge to judge

Question 2239) If a judge writes to another, will the letter be accepted?

A: It is accepted in matters of rights if it was witnessed to in his presence. It is not accepted in Hudud and Qisas. If the witnesses testify against the party which is present, he may rule accordingly and write his decision. If they testified and the party is not present, he may not give a ruling but will write the Arsh for the addressed judge to make a ruling. It is Wajib for him to first read out the letter to the witnesses that they may know its contents. He will then seal it and hand it to the witnesses.

Question 2240) Will the addressed judge accept the letter when he receives it without further evidence?

A: He may not accept it without the Arsh of two men or a man and two women, nor may he accept it without the disputant being present. When the witnesses hand the letter to him, he must examine the seal.

The witnesses must testify, "It is the letter of Judge so-and-so, he handed it to us during high court session, he read it to us and sealed it." The addressed judge will then open it and read it to the disputant. He will implement its contents.

Kitabul Qismah [Partition]

Question 2241) A house, property etc is jointly owned. The partners require that it be partitioned. Who will do it?

A: It is appropriate for the ruler to appoint a Qasim [partitioner]. He will receive a state salary and will perform to partitioning service to the public for free.

Question 2242) How will he operate if the public treasury cannot support him?

A: He will render his service for fee payable by the partners. The Qasim must be just, trustworthy and knowledgeable in partitioning. The judge will not force a single Qasim upon the people, nor will he allow those in that profession to collaborate in partnership.

Question 2243) Do the partners pay equal fees?

A: According to Imaam Abu Hanifah رحمته الله the fee is divided equally amongst each partner. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the fee is split according to each one's share.

Question 2244) The partners request that the judge arrange for their house or property to be partitioned. They claim that they jointly inherited it. Will the judge order the partition just on their word or must he demand evidence?

A: According to Imaam Abu Hanifah رحمته الله he will not divide it until they produce evidence of the death and the amount of heirs.

According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله their word is accepted. This is in regards land. As regards other joint wealth, all agree that their word that they inherited it will be accepted.

Question 2245) Besides inheritance, what if they claim that they bought the land or claim ownership without specifying how they came to possess it?

A: It will be divided according to their claim.

Question 2246) Two heirs present evidence to the judge concerning the death and amount of heirs. They have the house in their hands and request a partition. There is however another absent heir. Will the judge agree to the partition based on the request of the present heirs?

A: Yes, he will appoint an agent to take possession of the share of the absent heir. This is if it is a jointly inherited house. If they bought it, it may not be partitioned in the absence of any partner, even if the others present proof of purchase.

Question 2247) A group inherits property. One of them is absent. He has the entire or part of the property in his possession. Those present seek partition. Will it be divided?

A: No.

Question 2248) Only one partner comes and seeks partition. Will the judge comply?

A: If the shared substance is such that each partner will benefit from his share, then partition can occur at the request of one partner. If however one will benefit and the other be harmed due to the minimal nature of his share, partition can occur at the request of the major holder and not at the request of the other.

Question 2249) If both partners will be harmed by partition?

A: It will only be divided if both partners agree to it.

Question 2250) What is the ruling of dividing commodities?

A: If it is a single kind of good it can be divided at the request of any partner. If a mixture of several kinds then it cannot be divided except through mutual consent.

Question 2251) What is the ruling of dividing slaves and jewels?

A: According to Imaam Abu Hanifah رحمته الله they may not be divided. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله jewels can be divided, not slaves.

Question 2252) Can baths and mills be divided?

A: Only if there is mutual consent.

Question 2253) Several houses are jointly owned in the same city, how will they be divided?

A: According to Imaam Abu Hanifah رحمته الله each house will be separately divided. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله if it be more convenient for them, each may take his share in whole houses.

Question 2254) How will partition be done if they share a house and land, or house and shop?

A: Each will be separately divided.

Question 2255) How does partition take place?

A: It is appropriate for the Qasim to draw what he is going to divide. He should settle their shares and measure it. He will arrange the buildings in such a way that each partner has his own access to the road and water and that each share thus is independent of the other. The shares will then be allotted by means of lots. Monetary

compensation will not be part of the partition unless the partners mutually agree.

Question 2256) After the partition, the one partner still had a waterway or pathway in the property of the other. The judge had not stipulated the right to use them. How will this be resolved?

A: If possible, move the path from his share, because he cannot use the path or flow water in the land of the other. If this is not possible then the partition is annulled due to the mixture.

Question 2257) How is partition done of a shared bottom floor, or a shared top floor, or bottom floor with a shared top floor?

A: Each is separately divided. Division is based on price, nothing else.

Question 2258) The one partner claims he did not receive his due share. The other partners claim that he did. Two Qasims testify that he did. Will their Arsh be accepted?

A: Yes.

Question 2259) A partner claims that there has been a mistake, something of his is in the hands of another partner. However, he had previously testified that he had received his full share.

A: His claim will not be accepted unless he produces proof.

Question 2260) If he says, "I received my full share, then one of the partners took part of it." The other denies it. What will be done?

A: His opponent's word will be accepted under oath.

Question 2261) One partner says, "I was to receive until that spot, but my partner did not hand it over to me." He had not previously testified that he had received his share in full. The partner belies him. What is the ruling?

A: Both will take oaths and the partition will be annulled.

Question 2262) After partition a specific part of one of their shares is rightfully claimed by a third party.

A: According to Imaam Abu Hanifah رحمته الله the partner who loses will claim his proportionate loss from the other partner's share. According to Imaam Abu Yusuf رحمته الله the partition is cancelled.

Kitabul Ikrah [Coercion]

Question 2263) Under what circumstances is coercion established?

A: It is only established from a source capable of fulfilling threats, be it the legal ruler or a criminal.

Question 2264) A man was forced to sell his goods or to buy goods; or to confess that he owes someone 1000 Dirham; or to rent his house. He was threatened with death, beating or detention. He therefore agreed. The force was then removed. What is the ruling?

A: He may sanction the sale or he may cancel it and take back his goods. This is if he took the price under compulsion. If however he had freely given the goods or taken the price, then his action has sanctioned the sale.

Question 2265) He was forced to sell. He took the price under duress. What is his duty?

A: He must return the price if it still intact in his possession.¹³²

¹³² If it has been destroyed then he is not liable. He had not taken the price as owner, but as trustee. One is not liable for trust if destroyed without neglect. [al-Kifayah]

Question 2266) The seller sold under duress. The buyer was not forced and the goods perished in his possession. Is he liable?

A: Yes, he must pay the market price of the goods to the seller.

Question 2267) Can the coerced hold the [third party] coercer liable?

A: Yes.

Question 2268) A man was threatened with jail, beating or chains if he does not eat carrion or drink wine. What is the ruling?

A: The carrion and wine are not Halal. If he is, however threatened with loss of life or limb, then only may he comply with what he has been forced to.

Question 2269) Does he not have the option of persevering and on what he has been threatened with and undergo death or loss or limb?

A: No, and if the threat is actually implemented because he refuse to eat, then he has committed a sin.

Question 2270) A man is threatened with chains, jail or beating unless he denies Allaah or vilifies Rasulullaah ﷺ. He is considered forced?

A: No, only when threatened with death or loss of limb.

Question 2271) If he then fears for loss or life or limb, can he then express disbelief, may Allaah save us?

A: Yes, he may express with his tongue that which contradicts his heart. If he does so, but his heart has real Iman, then there is no sin against him. Allaah says that in Surah an-Nahl. However he should attempt to use *Tawriyah* – words which have a double meaning, intending the non-Kufr meaning.

Question 2272) Is he a sinner if he perseveres and refuses to utter the words of Kufr until he is slain?

A: No, he will be rewarded.

Question 2273) Can he comply if forced by threat of loss of life or limb to destroy the possessions of a Muslim?

A: Yes, unless it was the owner of the destroyed goods who forced him to do so.

Question 2274) Can the owner of the destroyed goods hold the one who forced him liable?

A: Yes.

Question 2275) A man is threatened with death unless he kills another Muslim. Can he comply?

A: No. He must resist even if killed.

Question 2276) What is the status of the induced person who kills a Muslim?

A: He is a sinner.

Question 2277) If the killing is *'amad*, upon who will retaliation be inflicted?

A: The one who forced him to commit the murder.

Question 2278) A man divorced his wife or freed his slave under duress. Is the divorce and manumission valid?

A: Yes.

Question 2279) What then are his options for reimbursement of the Dowry or value of his slave?

A: He will claim the value of the slave from the one who forced him, or half the dowry if he had not had sex with his wife. If they had had sex then there is no liability upon the inducer.

Question 2280) Will the Hadd be inflicted if a man was forced to commit Zina?

A: According to Imaam Abu Hanifah رحمته الله the Hadd will be inflicted unless it was the ruler who forced him. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله the Hadd will not be inflicted.

Question 2281) A man was forced to leave Islaam and utter words of disbelief. Is his wife separated from him?

A: No, unless he apostatised in his heart as well.

Kitabus Siyar [Military regulations]

Question 2282) What is Siyar?

A: It is the plural of *Sirah*, which literally means "way of affairs." In the terminology of the Jurists it refers to the military expeditions of Rasulullaah ﷺ. In Kitabus Siyar they mention the regulations of Jihad and related matters, such as distribution of booty, imposition of *Jizyah*, treatment of prisoners etc.

Question 2283) What is the ruling of Jihad in Shari'ah?

A: It is *Fard 'alal Kifayah*. If a group of Muslims establish it, the obligation is lifted from the rest. If none establish it, all Muslims are sinners for abandoning it. Jihad is not a duty upon minors, slaves, females, blind men, cripples and those with lost limbs. However, if the enemy assaults a particular city of the Muslims, Jihad becomes *Fard* upon every individual Muslim. It becomes their duty to repel the enemy. A woman will in those circumstances go for battle without her

husband's permission and a slave will fight without his owner's permission.

Question 2284) You have mentioned two stages of the obligation of Jihad. Explain Jihad which is *Fard 'alal Kifayah*. How is it implemented in every age?

A: We shall strike at them first even if they do not commence hostilities against us. We shall continue to fight them until they either embrace Islaam or they render *Jizyah* in humiliation. When the Muslims abandoned Jihad and combat, they were conquered and became playthings of the enemy.¹³³

Question 2285) The Muslims set out for Jihad. They enter *Darul Harb* [the lands of hostile Kuffar] and besiege a city or fort. With what act should they commence?

A: They will first call them to Islaam. If they accept, the Muslims should desist from fighting. If they refuse then the Muslims should demand that they render *Jizyah*. If they comply then they will share the same rights and obligations as the Muslims. If they refuse, then the Muslims will seek Allaah's help against them and fight them. They will use catapults, fire and water against them. They may cut their trees and destroy their crops, but may not break their word or any agreement made. They may not mutilate their dead, kill a woman, child, madman, old man, blind man or cripple unless any of these was an advisor to the Kuffar in battle, or the woman was the queen of the Kuffar. A woman may not fight without her husband's permission and a slave may not fight without his owner's permission unless there is an enemy assault as already discussed.

Question 2286) Can the Muslim attack without offering them Islaam?

¹³³ Abu Bakr رضي الله عنه narrates that Rasulullaah ﷺ said, "When a people abandon Jihad, Allah afflicts the mass of them with punishment." [at-Tabrani in *al-Mu'jam al-Awsat*]. This warning of Rasulullaah ﷺ has certainly become apparent. The Muslims have been afflicted by great disasters ever since they became neglectful of Jihad and abandoned it.

At-Tashil ad-Daruri (Part 2)

A: No, fighting is not permissible without presenting the enemy with Islaam first. Thereafter if facing a particular people to whom the call to Islaam had reached, it would be recommended but not obligatory to renew the call to Islaam first.

Question 2287) The may be Muslim prisoners or traders in the land of the Kuffar. If weapons such as arrows were to be used, we have no guarantee that they will not kill those Muslims. Should such weapons therefore not be used in such instances? Similarly what if the Kuffar use Muslim children or prisoners as shields, can the Muslims still shoot their arrows at them?

A: The Muslims should not desist from firing and should still shoot their arrows, intending the Kuffar and not Muslims.

Question 2288) Is it permissible to take women and copies of the Quraan with into enemy lands?

A: If the Muslim army is large enough that they are satisfied that they can protect the women and Manuscripts, they may do so. If they are small and cannot guarantee protection then it would be Makruh.

Question 2289) What is the status of buying weapons from the enemy?

A: It is not permissible to buy weapons from the enemy or to equip them in turn.

Agreements

Question 2290) Is the Muslim ruler allowed to conclude peace with the enemy or a group amongst them?

A: It is permissible if there is some benefit to the Muslims in that.

At-Tashil ad-Daruri (Part 2)

Question 2291) He made a peace agreement for a specified time and then saw that terminating the agreement would be better for the Muslims. What is the ruling?

A: It is permissible, although he may not commence fighting until announcing the termination of the treaty. Allaah says, "If you fear treachery from a people then throw back [the treaty] that you may be on equal terms. Verily Allaah does not love the treacherous." [al-Anfal:58]

Question 2292) What will the Muslim ruler do if they enemy acts treacherously?

A: If the act was agreed upon amongst the enemy, the Muslims will attack without respite of announcement.

Question 2293) Can the Muslims accept peace with the enemy in exchange for receiving payment from them?

A: Yes, the money received will be used as Jizyah is used.

Aman [Amnesty]

Question 2294) What is the status of Muslims granting the Kuffar amnesty?

A: If a free Muslim male or female grants a Kafir individual, group, fort or city amnesty it is valid. No Muslim may then fight them. If there will arise mischief from that, the ruler will announce to them its annulment.

Question 2295) Who may not grant amnesty?

A: The amnesty of a Zimmi is not valid and a prisoner or trader who is amongst the enemy may not grant amnesty. According to Imaam Abu Hanifah رحمہ اللہ an incapacitated slave may not grant

amnesty unless his owner permits him to fight. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله his amnesty is valid.

Booty and its distribution

Question 2296) A land has been conquered by force. What will be done with its lands and people?

A: The ruler may either share it amongst the Muslims; or leave it in the hands of its people and impose Jizyah on the people and *Khiraj* on the land.

Question 2297) If the booty has been collected, how will it be divided?

A: It will not be shared until it has been taken out of *Darul Harb*. Once it is in *Darul Islaam* the state's fifth is taken out and the remaining four-fifths is divided amongst those who have earned the booty. According to Imaam Abu Hanifah رحمته الله each horseman receives two shares and each infantryman receives one share. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله horsemen receive three and infantrymen one. *Rid*¹³⁴ and fighters are equal. Even if the fighters meet the reinforcements in *Darul Harb* before the booty is taken to *Darul Islaam* then they will share with them in it. Foreign and Arabian horses are the same. Each horseman only gets shares for one horse. Camels and mules are not counted.

Question 2298) A man set out for battle on horse and entered enemy lands thus. His horse then perished. Does he receive the share of a horseman or infantryman?

¹³⁴ Those who entered enemy lands, witnessed the participants, assisted by means of their numbers and equipment but did not get the opportunity to physically fight.

A: Horseman.

Question 2299) A man entered enemy land on foot and bought a horse there. What share does he receive?

A: Infantry.

Question 2300) A man in the Muslim army died in *Darul Harb* before the booty could be taken to *Darul Islaam*. Does his estate receive his share?

A: No.

Question 2301) And if he died after the booty reached *Darul Islaam*?

A: His heirs will receive his share.

Question 2302) Traders met up with the Muslim army to buy and sell in the camp. Do they receive booty?

A: Only if they actually fight.

Question 2303) Can the booty be divided in *Darul Harb*?

A: No, it must be taken to *Darul Islaam* and shared there. If there is no means of transport, the booty will be divided amongst the fighters in *Darul Harb* as *Wadi'ah*. They will then return it to *Darul Islaam* where the state's fifth will be taken and the remainder divided.

Question 2304) Can booty be sold in *Darul Harb* before distribution?

A: No.

Question 2305) Can the fighters use the booty whilst still in *Darul Harb*?

A: If there is any fodder it can be used to feed the animals, the food can be eaten, firewood lit, oil used on themselves and the horses'

hooves and the weapons used for fighting. All these are permissible before the division. It is not permissible to sell any of that or to enrich oneself with it. Whoever has leftover fodder and food must return it to the booty. Once the booty leaves *Darul Harb* it is not permissible to consume the food and fodder there from.

Question 2306) A slave, woman, child, madman or Zimmi participated in the Jihad. Do they receive shares?

A: They do not receive formal shares from the booty, although the commander may award them a nominal amount as per his discretion.

Question 2307) How is the Fifth spent?

A: Three parts are for the orphans, one for the poor and one for travellers.

Question 2308) Allaah says, "Know that the booty you earn a fifth is for Allaah, the Rasul, his relatives, the orphans, the poor and the travellers." You have omitted the first three. Why is that?

A: According to Ibn 'Abbas ¹³⁵ the mention of Allaah at the beginning is for blessings. The share of the Rasul ¹³⁶ dropped upon his death just as *Safi* ¹³⁵ was dropped. His relatives were entitled during his lifetime because of their assistance to him. After his death they are only entitled by way of poverty. They are more entitled than other poor people. Their wealthy will receive nothing.

Question 2309) An individual or two entered *Darul Harb* without the ruler's permission and conducted a raid. What is the status of the Fifth of their booty?

A: A fifth will be taken from what they had acquired by force, even if the ruler had not authorised them.

¹³⁵ His right to award himself something from the booty e.g. armour, a sword, a slave-girl etc.

Question 2310) The Muslims wish to return to *Darul Islaam*. They have beasts which they cannot bring back with them. What should they do?

A: They must slaughter them and burn the bodies. Nothing should be left for the enemy. The animals should not be wounded.

Anfal [Awards]

Question 2311) Can the fighters receive amounts in addition to their booty shares?

A: It is permissible for the commander to reward them during fighting and may announce, "He who slays an enemy may keep his spoils."

He may also tell a particular expeditionary force, "I set aside for you a quarter after the fifth is taken out."

This is before the booty is taken to *Darul Islaam*. Once there, rewards may not be given except from the Fifth.

Question 2312) What are the "spoils"?

A: That which is on the slain, such as his clothing and weapons; his mount and that which is on it such as the saddle and equipment; that which he had with him on an animal such as wealth in a bag or on it. All those are spoils. Anything else is not.

Question 2313) What is the status of the spoils if the commander had not announced them for the killer?

A: It will be included in the general booty. The killer and everyone else has equal rights to it.

Prisoners

Question 2314) What will the Muslim army do with the Kuffar prisoners they capture?

A: The commander may execute them, enslave them or free them as Zimmis. It is not permissible to return them to *Darul Harb*; nor release them; nor offer them in ransom according to Imaam Abu Hanifah رحمته الله عليه. According to Imaam Abu Yusuf رحمته الله عليه and Imaam Muhammed رحمته الله عليه they may be exchanged for Muslim prisoners.

Those who embrace Islaam in Darul Harb

Question 2315) A Kafir embraces Islaam in *Darul Harb*. Does his Islaam guarantee his life etc?

A: His life, that of his minor children, the wealth in his possession, and any *Wadi'ah* he may have of a Muslim or Zimmi will all be respected.

Question 2316) A Kafir embraces Islaam. He has land, a wife or adult children in *Darul Harb*. What is their status if we conquer them?

A: His land, wife, her foetus and his adult children will all be *Fay*. Any of his slaves who fought will also be *Fay*.

Question 2317) A man embraced Islaam in *Darul Harb*. He had money which a Harbi, Muslim or Zimmi usurped. What is its status?

A: The wealth in the hands of the Harbi is *Fay*, be it usurped wealth or *Wadi'ah*. The usurped wealth in the hands of a Muslim or Zimmi is *Fay* according to Imaam Abu Hanifah رحمته الله عليه. According to Imaam Muhammed ¹³⁶ رحمته الله عليه it is not *Fay*.

¹³⁶ And according to Imaam Abu Yusuf رحمته الله عليه.

'Ushr & Khiraj [Land taxes]

Question 2318) Upon which lands is 'Ushr and Khiraj imposed?

A: 'Ushr is imposed on the following lands:

1. All of Arabia which is defined as the area between 'Uzayb and the ends of Hajar in Yemen, from Mahrah in Yemen to the border of Syria.
2. A land whose people embraced Islaam.
3. A land conquered by force and divided as booty.
4. The land of al-Basrah, according to us, as per the unanimous decision of the Sahabah رضي الله عنهم.

Khiraj is imposed upon these lands:

1. The land of al-'Iraq, which is defined as between al-'Uzayb and the mountain-pass of Hulwan, and from al-'Alth to 'Abadan. It is the property of its inhabitants who may buy and transact in it.
2. Land conquered by force and the people left to it.
3. A man cultivates dead land. According to Imaam Abu Yusuf رحمته الله عليه it is classified according to the adjacent land. If it is *Khiraj* land then his is also *Khiraj*. If it is 'Ushr land, then his is also 'Ushr. According to Imaam Muhammed رحمته الله عليه if he cultivated it by a well he dug or a spring he let gush out, or with the Tigris, Euphrates or any other large river which nobody owns then it is 'Ushr land. If by means of canals which the non-'Arabs had dug e.g. The Imperial Canal or the Yazdgerd Canal then it is *Khiraj* land.

Question 2319) What are the details of paying 'Ushr?

A: It has been explained in Kitabuz Zakah, refer to it.

Question 2320) Explain the quantity of *Khiraj*.

A: The *Khiraj* which 'Umar رضي الله عنه imposed upon the people of al-'Iraq is as follows –for every Jarib [land measure] which water reaches and is capable of having crops grown 1 Hashimi Faqlz which equals a Sa' and a Dirham. 5 Dirhams for every Jarib of Rutab. 10

Dirhams for every Jarib of joined grapes or joined date trees. Besides that will be according to capability.

Question 2321) The ruler imposed *Khiraj* upon a land which cannot sustain it, what will be done?

A: It will be reduced to an amount appropriate to its condition.

Question 2322) *Khiraj* was flooded, or could not be watered, or the crops was afflicted by some calamity. Is the *Khiraj* forgiven?

A: Yes.

Question 2323) If the owner leaves it fallow, what is the ruling of the *Khiraj*?

A: He must still pay it.

Question 2324) The Zimmi owner of *Khiraj* lands embraces Islaam or sells the land to a Muslim. Does the status of the land change?

A: No, it remains *Khiraj* land.

Question 2325) Is *Ushr* taken in addition from *Khiraj* lands?

A: No, the two are not joined. There is no *Ushr* on *Khiraj* land.

Question 2326) Is *Khiraj* multiply charged if the crop grows more than once in the same year?

A: No.

Jizyah

Question 2327) What is *Jizyah*?

A: *Jizyah* is what is taken from the Zimmis to protect their lives and wealth. There are two kinds – *Jizyah* which is given by consent at

the time of a peace treaty, the amount is determined by mutual consent, and *Jizyah* which imposed on those conquered by force and left to live in their lands.

Question 2328) What are the details of the *Jizyah* imposed of the conquered Kuffar?

A: The one who is apparently rich must pay 48 Dirham annually, each month 4 Dirhams will be taken. The middleclass person will pay 24 Dirham annually, each month 2 Dirham will be taken. A poor working class person will pay 12 Dirham annually. Each month 1 Dirham will be taken.

Question 2329) Are there Zimmis exempt from *Jizyah*?

A: Woman, minors, chronically ill, poor who do not have steady work and monks who do not associate with the people are exempt from *Jizyah*.

Question 2330) Do all Kuffar pay *Jizyah* or are there sects which are exempted?

A: *Jizyah* is imposed upon the People of the Book, Fire-Worshippers and Idolaters who are not 'Arab'. 'Arab Idolaters and Apostates do not have the option of *Jizyah*. Their only choice is between Islaam and the sword.

Question 2331) A Zimmi with outstanding *Jizyah* embraces Islaam. Is the amount forfeit?

A: Yes.

Question 2332) A Zimmi has two years of outstanding *Jizyah*. Will he be pardoned?

A: Yes, he will only pay one year's *Jizyah*.

Question 2333) Are there people who instead pay double the Zakah Muslims pay?

A: Yes, the Christians of Banu Taghlib will pay double the Zakah Muslims would pay. This applies to their men and women but not children.

Fayy

Question 2334) What is Fay? What is the difference between it and *Ghanimah* [booty]?

A: *Fay* is on the same syntax scale as *Shay*. The verb is read as *fa-a yafiu* and means to return. *Ghanimah* is that which is taken by force from the Kuffar. That which is taken without fighting is *Fay*. The forms of *fay* the jurists have mentioned include Jizyah, Khiraj, and what has been acquired from the Kuffar in lieu of peace. Some of these we have covered, we shall discuss the rest *inshaAllaah*.

Spending of Khiraj, Jizyah and Fay

Question 2335) On what is Khiraj, Jizyah and Fay spent?

A: What the ruler collects from Khiraj, Jizyah, the payments of Banu Taghlib, and the gifts from *Darul Harb*, he will spend for the benefit of the Muslims. He will build harbours, canals and bridges and pay the judges and 'Ulama that which suffices them. He will provide for the soldiers and their children from it.

Laws about Zimmis

Question 2336) What are the special regulations pertaining to the Zimmis living in *Darul Islaam*.

A: They may not build churches and synagogues in *Darul Islaam*. The ruler may permit them to restore those places of worship which fell into ruin before Islaam gained dominance. They will be ordered to distinguish themselves from the Muslims by means of their attire, mounts, saddles, and headgear. They may not mount horses and may not carry weapons.

Question 2337) A Zimmi refused to pay Jizyah, killed a Muslim, committed Zina with a Muslim lady, or abused Rasulullaah ﷺ. Is his covenant terminated?

A: No. It is terminated if he leaves for *Darul Harb* or the Zimmis overpower a region and wage war against us.

Mustamin [Harbi who has permission to enter Darul Islaam]

Question 2338) The Kuffar have need to enter our lands in safety just as Muslim often enter their lands. Explain the relevant rules.

A: The jurists have explained this as follows:

1. If a Muslim enters *Darul Harb* with their guarantee of safety, *fc.* the purpose of trade, he may not violate their wealth or blood. If he deceives them and takes anything of theirs to *Darul Islaam*, his ownership thereof is illicit and he must give those goods away in charity.
2. If a Harbi enters *Darul Islaam* with our guarantee of safety he may not stay a full year. He will be warned, "If you remain here for a year, Jizyah will become liable upon you." If he does remain for a year, Jizyah will be taken from him. He becomes a Zimmi and may not return to *Darul Harb*.
3. If he does return to *Darul Harb* and has left a *Wadi'ah* by a Muslim or Zimmi, or they are indebted to him, his blood has become permissible to shed because of his returning to *Darul Harb*, and his wealth in *Darul Islaam* is in jeopardy. If he is captured or appears in *Darul Islaam* and is killed then the debts owing to him is

forgiven and his Wadi'ah becomes Fay. If he was killed without appearing in *Darul Islaam* then his loans and Wadi'ah are for his heirs.

Muslims conquering Kuffar and Kuffar conquering Muslims

Question 2339) What is the ruling of Muslim conquering Kuffar, Kuffar conquering Muslims, and some conquering each other?

- A: The jurists have written several Masail in this regard:
1. If a group of Kuffar conquer another group of Kuffar, and capture them and take their wealth, they become the owners. If we then conquer them, what we find of that is Halal for us.
 2. If the Kuffar capture our wealth and take it to *Darul Harb*, they become the owners. If they Muslims then recapture it and the previous owners find it before being shared, then they may reclaim it without compensation. If they found it after the booty was divided, they may claim it but must pay the market value.
 3. A trader enters *Darul Harb* and buys that wealth which the Kuffar plundered. He takes it back to *Darul Islaam*. The previous owner has first right. He may buy it from the trader at the price he paid the Kuffar, or he may leave it.
 4. If a camel of Muslims runs wild and the Kuffar take it, they own it.

If a slave is captured by the Kuffar or he flees to them

Question 2340) What is the ruling if one of our slaves flees to the Kuffar with goods; or they capture him?

- A: There are several Masail in this scenario:
1. The Kuffar captured a slave of a Muslim. One of them bought him and returned him to *Darul Islaam*. One of his eyes was put out and

he claimed *Arsh*. The old owner can claim him at the price the man paid the enemy but will not take the *Arsh*.

2. The Kuffar captured a slave of a Muslim. A man bought him for 1000 Dirham. He was captured a second time and taken to *Darul Harb*. Another man bought him for 1000 Dirham. The old owner cannot claim him from the second buyer. The first buyer can claim him from the second buyer for 1000. If the old owner then wishes he can claim him from the first buyer for 2000.
3. When the Kuffar captures a Mudabbbar, Ummul Walad or Mukatab belonging to the Muslims, their ownership is not recognised, as when they capture a free person of us. On the other hand, we will own whichever of the above we capture.
4. A slave belonging to a Muslim flees to the Kuffar and they take him. According to Imaam Abu Hanifah رحمته الله they do not own him. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله they own him.
5. A slave belonging to a Muslim flees with a horse and goods to the Kuffar. The Kuffar take all that. A man buys these items and takes them to *Darul Islaam*. The original owner can take the slave back without compensation and the horse and goods at the price the man paid. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله if he wants them back he must pay, including for the slave.
6. A Harbi enters *Darul Islaam* with aman and buys a Muslim slave. He takes him to *Darul Harb*. According to Imaam Abu Hanifah رحمته الله the slave is free. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he is not.
7. A slave of a Harbi embraces Islaam and flees to us or is captured in their lands. He is now free as any of their slaves who flees to the Muslim camp.

Apostates

Question 2341) What are the regulations of Muslims who abandon Islaam?

A: They are as follows:

1. When a man abandons Islaam he will be presented with an opportunity to re-embrace it. If he has any doubts, these should be explained to him. He will be imprisoned for three days. If he accepts, well and good. If he refuses he will be killed.
2. It is Makruh to kill him before offering him Islaam. Nevertheless there is neither Qisas nor Diyah upon his killer.
3. If a woman abandons Islaam, she will not be killed. She will be imprisoned until she embraces Islaam, even if forever.
4. The apostate's ownership of his wealth is suspended. If he returns to Islaam his wealth returns to him. If he is executed or dies upon his apostasy, the wealth he earned during his Islaam goes to his Muslim heirs. What he earned after apostasy is *Fay* and will be deposited in the public treasury.
5. If the apostate flees to *Darul Harb* and the judge declares it official, his Mudabbar and Ummul Walad are free and his debts are absolved. His earnings as a Muslim are distributed amongst his Muslim heirs. His debts which he incurred as a Muslim will be paid from his wealth earned as a Muslim. His debts which he incurred as an Apostate will be paid from his wealth earned as an Apostate.
6. All his buying, selling and transacting as an apostate are suspended. If he returns to Islaam they are valid, if he dies, is killed or flees as an apostate to *Darul Harb* then they are void.
7. If he returns to *Darul Islaam* as a Muslim after the court had declared his going to *Darul Harb* official, then he may claim what remains of his wealth in the hands of his heirs.
8. The transactions of a female apostate during her apostasy are valid.

Rebels

Question 2342) What should the ruler do if a people withdraw from the obedience of Islaam and overwhelm a region?

A: The ruler should call them to return and will attempt to answer their grievances. He will not commence hostilities until they do

so first. Once the attack he should endeavour to split their ranks asunder. If they have a group they flee to, he should swiftly slay their wounded and pursue those who flee. If they do not have such a group, he should not kill their wounded nor pursue those who flee. Their children will not be captured and their wealth will not be plundered.

Question 2343) The ruler's army captured rebel weapons. Can they use them?

A: If the Muslims are in need, they may do so.

Question 2344) The ruler's army captured wealth of the rebels. What should he do with them?

A: He will impound it and will not return it to them until they repent.

Question 2345) The rebels have collected Khiraj and 'Ushr from the lands they control. The ruler then reconquers those lands. Will he collect the taxed a second time?

A: No. If the rebels had spent it correctly then it suffices on behalf of those who had paid. If they had not, then it is the personal responsibility of the people of that land in their relation with Allaah to pay a second time.

Kitabul Hazhr wal Ibahah [Prohibited and permitted]

Question 2346) What is the meaning of *Hazhr* and *Ibahah*?

A: *Hazhr* is literally "prohibition." *Mahzhur* is prohibited. *Ibahah* is the right of the Mukallaf [one answerable in Shari'ah] to do or to omit certain acts without entitlement of either reward or punishment.

Attire

Question 2347) Which attire is permissible and which are prohibited for men and women?

A: There are details to this question:

1. Neither a man nor a woman may imitate the Kuffar in clothing, apparel and appearance. Men may not imitate women and women may not imitate men.¹³⁷
2. Extravagance and waste are not allowed.
3. Men may not wear silk. Women may.
4. Men may wear silk and brocade in war according to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammed رحمہ اللہ. It is Makruh according to Imaam Abu Hanifah رحمہ اللہ.
5. There is no harm in men wearing a silken garment if the lengthwise thread is cotton.
6. It is Haram for men to wear their loin-cloths, trousers, shirts etc to below the ankles.¹³⁸

Question 2348) What is the status of silken pillows?

A: According to Imaam Abu Hanifah رحمہ اللہ there is no harm. According to Imaam Abu Yusuf رحمہ اللہ and Imaam Muhammed رحمہ اللہ it is Makruh.

Using gold and silver

Question 2349) What is the ruling of using gold and silver?

¹³⁷ Ibn 'Abbas رضی اللہ عنہ narrates that Rasulullaah ﷺ said, "May Allah curse the men who imitate women and women who imitate men." [al-Bukhari]

¹³⁸ Abu Hurayrah رضی اللہ عنہ narrates that Rasulullaah ﷺ said, "That which falls below the ankles of the loin-cloth is in Jahannum (Hell)." [al-Bukhari]

A: The rules are as follows:

1. Men may not adorn themselves with gold and silver. Women may.
2. It is not permissible to dress a child in gold and silk.
3. There is no harm in a man wearing a silver ring as long as it does not reach a Mithqal. Anything besides silver is not allowed.
4. Gold and silver vessels may not be used for eating, drinking, oiling or perfuming. Thus neither men nor women may use gold and silver spoons or antimony sticks.
5. There is no harm in using glass, lead, crystal and carnelian vessels.
6. According to Imaam Abu Hanifah رحمہ اللہ it is permissible to drink from a silver plated vessel, sit on a silver plated saddle or seat, as long as one avoids the actual silvered area.
7. There is no harm in decorating the Manuscripts of the Quraan, engraving the Masjid and beautifying it with gold water.

Sex, gazing and caressing

Question 2350) What is the ruling of a man looking at a strange woman?

A: It is not permissible for him to look at her, except her face and hands¹³⁹. If he is not safe from lust, then he should not look at her face even, except under dire necessity. He may not touch her face or hand, even if it is without lust.

Question 2351) What is a valid reason to look at her face?

A: A witness has a valid reason to look at her when giving Arsh on her, as does the judge when ruling about her. They may look even if they fear that they will feel lust.

¹³⁹ That is not a license for women to roam about displaying their faces to all in this age of sin and rebellion. What security is there that the men are not gazing at them with lust?

Question 2352) A woman has a sore on her thigh. The doctor needs to examine it. What should he do?

A: He may examine the place of the sore only. He should not look at the rest of the thigh.

Question 2353) What is the law of men looking at men and women looking at women?

A: A man may look at another man's body except the region from the navel to the knees, as may a woman look at another woman except from the navel to the knees.

Question 2354) Which parts of a man may a woman look at?

A: She may see of a man whatever a man may see of a man.

Question 2355) What is the ruling of a man looking at his slave-girl and wife?

A: He may see the entire body of his permitted¹⁴⁰ slave-girl and wife.

Question 2356) What may a man see of his Mahram women?

A: He may see her face, head, chest and calves¹⁴¹. He may not see her back, thighs and stomach. There is no harm in him touching that which he may see.

Question 2357) What is the ruling of a man looking at a slave-girl not belonging to him?

¹⁴⁰ i.e. a slave-girl who is a Fire-worshipper, Mukatabah, married to another, or forbidden unto him by way of breastfeeding or Musaharah is just like a strange woman unto him in terms of what he may see of her.

¹⁴¹ This is also on condition that both parties are safe from lust.

A: He may see the same parts which are permissible for him to look at from his female Mahram relatives. There is no harm if he touches those parts if he intends purchasing her, even if he fears lust will arise.

Question 2358) Can a male slave look at his female owner?

A: No, he may only look at those parts which are permissible for a strange man to look at as per the previously mentioned conditions.

Hoarding and price fixing

Question 2359) What is the status of hoarding essential foods?

A: It is not permissible to hoard foods essential to men and beasts in a land where its hoarding harms its people.

Question 2360) A man kept back the grain of his farm, or the grain he imported. Is this deemed prohibited hoarding as well?

A: No.

Question 2361) What is the status of the government fixing prices?

A: It is not appropriate. The government should leave the people to trade as they wish.

Sundry regulations

1. It is Makruh to divide the Quraanic ayat in groups of ten (Ruku') and to place dots and diacritical marks therein.¹⁴²
2. It is Makruh to use eunuchs.

¹⁴² Because the 'Arabs could read the Quran without them. Putting the dots and marks these helps ensure correct reading.

3. There is no harm in castrating animals.
4. There is no harm in mating a horse and donkey to breed a mule.
5. It is permissible to accept the word of a slave or minor that the owner or adult had allowed the guest to enter or had given the recipient a gift.
6. The word of an open sinner will be accepted in transactions.
7. In matters of Din only an 'adil [does not openly sin] is accepted.
8. A eunuch gazing at a strange woman is the same as a normal man's regulations.
9. A man may practice coitus interruptus with his slave-girl without her permission. He may not do so with his wife, except with her permission.
10. It is Makruh to sell weapons during times of strife ¹⁴³
11. There is no harm in selling juice to one whom knows will make wine of it.

Kitabul Wasaya [Bequests]

Question 2362) What is Wasiyah and what is its status?

A: Literally it is a request that someone perform some act, whether during the life or after the death of the one requesting. In the terminology of the jurists it is the transfer of ownership to someone upon the one's death, whether it be of a physical item or of a benefit.

Its status is that if the *Musi* [one making the bequest] has obligations upon him to Allaah e.g. unpaid Zakah, he did not perform Hajj when it became compulsory upon him, etc then it is Wajib upon him to make a bequest that these be fulfilled on his behalf. It is also Wajib upon him to leave a bequest for the fulfilment of rights of people against him and debts he owes them. He must also leave instructions for the return of trusts and *Wadi'ah* he has by him.

¹⁴³ To those known to cause strife and rebellion.

If he does not have any outstanding rights of Allaah or humans or debts to be paid, then it is Mustahabb for him to leave a bequest that some of his wealth be spent in good avenues.

If his debts encompass his entire estate, then he may not make a bequest for anyone. If he does make a bequest, it is not valid and will not be implemented unless the creditors agree out of their kindness.

Question 2363) Can a Muslim leave a bequest for a Kafir? Can a Kafir leave a bequest for a Muslim?

A: Both are permissible.

Question 2364) Is a minor's bequest valid?

A: No.

Question 2365) Are there people for whom one's bequest is void?

A: A bequest for one's murderer is void, be the murder deliberate or accidental, if he was directly involved in the slaying.

Question 2366) Are there other people for whom bequests are not valid?

A: One cannot make a bequest for one's heir, unless all the other sane, adult heirs agree.

Question 2367) Why have you stipulated that the bequest be of "some of his wealth"? Can he not make a bequest with all his wealth?

A: A bequest is only valid up to a third of the estate, not more, unless the heirs agree after the death of the one making the bequest. Their consent during his life is disregarded. It is Mustahabb that one keeps the bequest to less than a third.

Question 2368) A man made a bequest for another. The recipient accepted or rejected it during the bequest maker's life. What is the status of his acceptance or rejection?

A: It is of no effect. Once the bequest maker actually dies, the recipient may then accept or reject.

Question 2369) Does ownership transfer with acceptance?

A: The one for whom the bequest was made assumes ownership upon acceptance, except in one scenario. If the one making the bequest dies and the one for whom the bequest was made dies before acceptance, the bequest is immediately transferred to the ownership of the beneficiary's heirs.

Wasi [Executor of the estate]

Question 2370) A man appointed an executor i.e. someone who will fulfil his bequest. He accepted in the presence of the one making the bequest and then rejected it in his absence. Has his status changed?

A: The status has changed if he refuses in his presence and the bequest is void. If he refuses in his absence then it does not change.

Question 2371) A man appoints a Kafir, slave or open sinner as executor. Is this valid?

A: The judge will replace them with another executor.

Question 2372) Can one appoint one's own slave as executor?

A: If there are adults amongst the heirs then it is not valid, otherwise it is.

Question 2373) If a man appoints an executor who is unable to implement the bequest, what happens?

A: The Judge will appoint someone with him.

Question 2374) A man appointed two executors. Must they transact together?

A: Yes, According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله none may transact without the other, except for purchasing funeral cloth and making funeral arrangements for the deceased; feeding and clothing his minor children; returning trusts; implementing specific instructions of the bequest; freeing specific slaves; fulfilling debts; and representing the deceased in legal disputes.

Musa lahu [Beneficiary of the bequest]

Question 2375) You have mentioned that bequests cannot exceed a third of the estate. A man makes a bequest for a man for a third of his estate and another third for another man. The heirs do not consent. How will this bequest be implemented?

A: A third of the estate will be equally divided between the two.

Question 2376) And if he bequeathed a third for one and a sixth for the other?

A: The first will get two-thirds of a third of the estate and the other will get a sixth of a third.

Question 2377) He bequeathed his entire estate to one man and a third to another. The heirs do not consent. What is the ruling?

A: According to Imaam Abu Hanifah رحمته الله a third will be shared equally between them. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله they will share a third between them in quarters. Three for the first man and one for the second.

Question 2378) Is there any scenario according to Imaam Abu Hanifah رحمته الله where the beneficiary can receive more than a third?

A: It is not allowed except in three cases – *Mahabah* [partiality]¹⁴⁴, *Si'ayah* [striving]¹⁴⁵ and *Darahim Mursalah*¹⁴⁶ [unrestricted dirhams].

Question 2379) A man made a bequest of a third of his Dirhams or goats for a man. Two thirds of it perished. Only a third remains. What will the beneficiary receive?

A: If all that remains equals a third of the estate the beneficiary takes everything.

Question 2380) A man made a bequest for another for a third of his clothing. Two-third got destroyed. The remaining third equals a third of the estate. What is the beneficiary entitled to?

A: A third of the remaining clothing.¹⁴⁷

¹⁴⁴ For example, a man has two slaves. One is worth 1,100 and the other is 600. He leaves a bequest that the one be sold to someone for 100 and the other to someone else for 100. The first has thus gained 1000 and the second 500. If there is no other wealth in the estate and the heirs do not consent, they will share in a third of 1500 as follows - the first gets pays 100 plus two-thirds of 1000 and the other 100 plus a two-thirds of 500.

¹⁴⁵ A man has two slaves nothing else. He bequests that they be freed. The one is worth 1000 and the other 2000. If the heirs agree they will be freed in total, if not then from one third which is worth 1000. The one worth 2000 will be freed from the estate to the extent of two-thirds of 1000 and will earn to reimburse the rest of his 2000. The one worth 1000 will be freed from the estate to the extent of a third of 1000 and will earn to reimburse the extent for the rest of his 1000.

¹⁴⁶ A leaves a bequest of 2000 Dirhams for one man and 1000 for another. One third of his known estate is 1000. Each is entitled to his full share on the possibility that there is more to the estate, although at the moment each will only two thirds of 1000 and a third of 1000 respectively.

Question 2381) A man left a bequest of 1000 Dirhams to the beneficiary. His estate consists of wealth at hand and debts owing to the deceased. How will the beneficiary be paid out?

A: If a third of the wealth at hand covers the 1000, it should be handed to him. If not, he will be given a third of the cash at hand and every time the debts are collected, a third will be given to him until he gathers his 1000.

Question 2382) Can a bequest be made in favour of a foetus?

A: Yes.

Question 2383) Can a bequest of a foetus be made?

A: Yes, if it is born in less than six months from the day of the bequest.

Question 2384) A man bequeathed his slave-girl to someone and excepted her foetus she was carrying. What is the status of the bequest?

A: The bequest and the exception are both valid.

Question 2385) A man bequeathed his pregnant slave-girl to a man and made no mention of the foetus. She gave birth after the bequest maker died. Only then did the beneficiary accept the bequest. Does he receive the slave only or her child as well?

A: If both are covered by a third of the estate then they are both his. If not, then they are valued over the third and he will take both of them in that proportion according to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله. According to Imaam Abu Hanifah رحمته الله he will first claim his proportion from the mother. If there is anything remaining then he will take it from the child.

¹⁴⁷ If they are of different kinds. If they are all the same then the ruling is the same as in Dirhams.

Question 2386) A man made a bequest for the children of a man or for the heirs of a man. How will they share the bequest?

A: In the first case they share equally, and the second as per inheritance i.e. a male gets double the share of a female.

Question 2387) A man left a bequest for Zayd and 'Amr of a third of his wealth. 'Amr dies. How will the bequest be shared?

A: Zayd gets the entire amount.

Question 2388) If he left a third of his estate to be shared between 'Amr and Zayd and Zayd dies?

A: 'Amr gets half of the third.

Question 2389) A man made a bequest of a third of his wealth. He has no wealth. He then earns some wealth. What is the beneficiary entitled to?

A: A third of whatever he owned at the time of death.

Question 2390) The beneficiary dies before the one who made the bequest. What is the status of the bequest?

A: It is void.

Question 2391) What is the status of a bequest, "equal to the share of my son"?

A: It is valid, for example if he had two sons, they get two thirds and the beneficiary a third.

Question 2392) A man left a bequest of a "share" and did not stipulate what the share is.

A: The beneficiary is entitled to the least share of the heirs. If that is less than a sixth he is entitled to a sixth.

Question 2393) And if the bequest was for a "part" of the estate?

A: The heirs may give whatever they wish to.

Question 2394) A bequest was made in favour of the neighbours. Who are entitled?

A: According to Imaam Abu Hanifah رحمته الله it refers to the adjacent neighbours.

Question 2395) Who are entitled if the bequest was for "ashar" [in-laws] and "akhtan" [sons-in-law]?

A: A bequest for Ashar is for every Mahram blood relative of his wife. Akhtan are all the husbands of his female blood relatives.

Question 2396) And if he bequeathed to his Aqarib [family]?

A: It includes his blood relative Mahrams from the closest then the next closest and so on. Parents and children are not included. It includes two individuals and more.

Question 2397) A man made a bequest for his family. He has two paternal uncles and two maternal uncles.

A: The bequest is interpreted for the paternal uncles.

Question 2398) And if he has one paternal uncle and two maternal?

A: The paternal uncle gets half and the maternal uncles share the other half. This is according to Imaam Abu Hanifah رحمته الله. According to Imaam Abu Yusuf رحمته الله a bequest for Aqarib covers all whose lineage is attributed to the furthest male ancestor in Islaam.

Manumission, Muhabah and gifts on the deathbed

Question 2399) Is it permissible to free one's slave, sell on *Muhabah* or grant a gift on one's deathbed?

A: These are all permissible, but must be taken from the third of the estate. The beneficiaries are treated just as the beneficiaries of an explicit bequest.

Question 2400) A man manumitted then made *Muhabah*; or made *Muhabah* then manumitted. Which will be implemented first?

A: According to Imaam Abu Hanifah رحمته الله if *Muhabah* is made first it has preference, if second then both are equal. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله both are equal in both scenarios.

Order of implementing bequests

Question 2401) A man made several bequests for the pleasure of Allaah. Which will be implemented first?

A: His Fard obligations must first be attended to, whether he put them first or last e.g. outstanding Hajj, Zakah and Kaffarah. That which is not Fard will be implemented as per his instructions.

Bequest of Hajj

Question 2402) A man left a bequest that his Fard Hajj be fulfilled. What is the duty of the heirs?

1. A man of his city should perform the Hajj on his behalf. He will do it with conveyance. If he did not leave sufficient funds to have the Hajj performed from his city, someone will be appointed from where the funds will suffice.

Question 2403) A man died on his way for Hajj. He left a bequest that Hajj be performed on his behalf. From where must the Hajj be performed?

A: According to Imaam Abu Hanifah رحمته الله it is from his city. According to Imaam Abu Yusuf رحمته الله it is from where he died.

Sundry regulations

1. A Mukatab's bequest is not implemented even if he left sufficient funds.
2. One may annul one's bequest, but the cancellation must be explicit.
3. One may make a bequest of the services of one's slave or residence of one's house for a specified time, just as one may do it for an indefinite time. If the value of the slave is within the third, the slave will be handed to the beneficiary for service. If the slave is the entire estate, he will serve the heirs two days and the beneficiary one day. When the beneficiary dies then the slave is entirely for the heirs.

Kitabul Faraid [Inheritance]

Question 2404) What is *Faraid*?

A: It is the plural of *Faridah*, which is applied to that which Allaah has written upon His slaves. He ordered us to do it, with emphasis, and there is no escape from fulfilling it. The one who does not do it and has no Shar'i excuse is a Fasiq [open sinner].

In common usage is has come to refer to the shares of inheritance Allaah has stipulated for males and females from the estate of the deceased. He says, "Allaah instructs you regarding your children, the male will receive double the share of the female."¹⁴⁸

Question 2405) Explain the order of Inheritance.

A: The estate of the deceased will first be used to cover his burial and funeral expenses which should neither be extravagant nor unduly frugal. Whatever is left will be used to pay his debts. After the payment of his debts a third of the remainder is used to fulfil any bequests he made. Thereafter the remainder will be divided amongst the heirs as per Allaah's instructions in His Book or what He conveyed via the tongue of His Rasul ﷺ.

One begins with *Ashabul Faraid*, who are those whose shares have been defined in the Quraan. Then the 'Asabat will receive what the *Ashabul Faraid* have left. If there are no *Ashabul Faraid*, the 'Asabat will take everything. If there are no 'Asabat then the remainder returns to those *Ashabul Faraid* who have the same lineage as per their shares.

If there are neither *Ashabul Faraid* nor 'Asabat, or there are no *Ashabul Faraid* to whom the remainder can return, then the *Ulul Arham* receive. If there are no *Ulul Arham* also, then the *Mawlah Muwalah* is entitled. If there are none then the beneficiary of the bequest is entitled to everything. If there are none then the estate is given to the public treasury.

Question 2406) Which males inherit from the deceased?

A: There are ten:

1. Son
2. Son's son and descending
3. Father
4. Father's father and ascending

¹⁴⁸ An-Nisa: 11-12

5. Brother
6. Brother's son
7. Father's brother
8. Father's brother's son
9. Husband
10. *Mawlan Ni 'mah* i.e. the one who holds the *Wala* of freeing a slave.

Question 2407) Which females inherit from the deceased?

A: There are seven:

1. Daughter
2. Sons' daughter
3. Mother
4. Grandmother, paternal and maternal
5. Sister
6. Wife
7. *Mawlan Ni'mah*

Question 2408) What are the causes of disinheritance?

A: There are four:

1. Slavery
2. Murder
3. If the deceased and the heir are of different religions.
4. If one party lives in Darul Islaam and the other in Darul Harb.

An Apostate and a slave thus do not inherit from anyone. A murderer cannot inherit from his victim. A Muslim cannot inherit from a Kafir, Kafir cannot inherit from a Muslim. A Harbi cannot inherit from a Zimmi, a Zimmi cannot inherit from a Harbi. Two Harbis cannot inherit from each other if they are in different Dars.

Question 2409) What are the shares Allaah has stipulated in the Quraan?

A: They are six:

1. half

2. quarter
3. eighth
4. two-thirds
5. a third
6. a sixth

Question 2410) Who is entitled to a half?

A: There are five such parties:

1. daughter
2. Son's daughter if there is no direct daughter.
3. Full Sister.
4. A sister on the father's side if there is no full sister
5. A wife if there is no son of the deceased or son's child and descending.

Question 2411) Who is entitled to the quarter?

A: The husband if his late wife has no children or son's children whether from him or another man. Similarly the wife of the deceased, if he had no children or son's children whether from her or another woman. If there are several wives they all share in the quarter.

Question 2412) Who is entitled to the eighth?

A: The wife if the late husband had a child or son's child. If there are several wives they share in the eighth.

Question 2413) Who is entitled to two-thirds?

A: Two or more daughters if the deceased does not have a son. Also, two or more daughters of a son if the deceased has no direct children or son's son. Also two sisters if they have the same parents as the deceased or at least the same father, and the deceased has no child, male or female. The father is also entitled to two-thirds if the deceased leaves behind both parents, but no son or daughter.

Question 2414) Who is entitled to the third?

A: The mother if the deceased did not leave behind a child, nor a child of the son, nor two or more brothers or sisters. Also entitled are if there are two or more children of the mother if the deceased has neither child, nor son's child, nor father, nor grandfather. In this case the males and females and males are equal in shares and entitlement.

Question 2415) Who is entitled to the sixth?

A: Each of the parents if the deceased has a child or son's child and descending. Also the mother if two or more brothers or sisters, irrespective from which side. Grandfathers and grandmothers if there is a child and son's child. The son's daughters with the daughter if they have no brother. Children of the mother if the deceased has no child or son's child and descending, male or female, and no father or grandfather.

Question 2416) Are there certain relatives who nullify the shares of others?

A: Yes, there are several which nullify others:

1. Maternal and paternal grandmothers are nullified if there is a mother.
2. The father nullifies the grandfathers and brothers.
3. A mother's child is nullified by any of these four - a child, son's child, father and grandfather nullify.
4. When daughters acquire two-thirds the son's daughters are dropped, unless there is equal to them or lower than them a son's son, in which case they inherit as 'Asabat.¹⁴⁹
5. When the full sisters acquire two-thirds the sisters who share only a father with the deceased are dropped, unless they have a brother, in which case they inherit as 'Asabat.

'Asabat

Question 2417) What is the order of inheritance of the 'Asabat?

¹⁴⁹ A male gets double the share of each female.

A: The closests 'Asabat are the sons; then their sons; then the father; then the grandfather; the then father's sons i.e. brothers; then the grandfather's sons i.e. paternal uncles; then the sons of the grandfather's father.

If the father's sons are equal in rank, then the full brothers have preference. Sons, sons' sons and brothers share with their respective sisters on the basis of double share for each male and single for each female. The other 'Asabat are exclusively male, without females.

These 'Asabat are by way of lineage. There is also the *Mawlal 'Itaqah* i.e. the ex-owner who had freed a slave who has now died. These are 'Asabah by way of cause. Next entitled are the closest then the next closest 'Asabat of the ex-owner. The ex-owner is only entitled after the 'Asabat by lineage, but before the Zawil Arham

Hajb [Disinheritence by presence of another relative]

Question 2418) What is *Hajb*?

A: It is the deprivation of certain heirs from inheriting by the presence of other heirs. If the heir is entirely deprived it is termed *Hajb al-Hurman*. If his allotment is reduced, it is termed *Hajb an-Nuqsan*.

Question 2419) Explain both kinds.

A: A mother's share is reduced from a third to a sixth by the presence of a child, a son's child and descending. Two brothers or sisters, from whichever parent they may be, reduce the husband's share from half to quarter when the deceased has a child, just as a wife is reduced from quarter to eighth when her late husband has a child. These are *Hajb an-Nuqsan*.

Hajb al-Hurman is enacted when there are two daughters and a son's daughter. The son's daughter is completely deprived in their presence.

If however he left one daughter and a son's daughter, the daughter gets half and the son's daughter gets a sixth to combine as two-thirds. If he left two full sisters and a sister with a common father, the half-sister is completely deprived. If there is one full sister and with a sister with a common father, the latter gets a sixth adding up with the other to two-thirds.

Radd [Remainder]

Question 2420) You had mentioned that if there are no 'Asabat then the remainder of the inheritance after the *Ashabul Faraid* get their shares the remainder gets shared amongst the *Ashabul Faraid*. Is this when both categories of 'Asabat are not to be found i.e. 'Asabat by lineage and 'Asabat by cause or only if the 'Asabat by lineage are not found.

A: It applies to both. Thus if the deceased has a *Mawlal 'Itaq* the remainder goes to him, not the *Ashabul Faraid*.

Question 2421) Why have you stipulated 'Asabat by lineage?

A: Because the remainder will not go to the husband or wife.

Ulul Arham

Question 2422) You have mentioned that if there are no *Ashabul Faraid* and no 'Asabat, the *Ulul Arham* will inherit the estate. Who are the *Ulul Arham*?

A: They are ten:
1. Daughter's child
2. Sister's child
3. Brother's daughter
4. Paternal uncle's daughter
5. Maternal uncle

6. Maternal aunt
7. Mother's father
8. Mother's father's brother
9. Paternal aunt
10. Son of brother with common mother.

The closest of these are more entitled than the further ones.

Question 2423) Is there an order to their entitlement or are they all equal?

A: There is an order to their entitlement to inheritance as follows – the most entitled is the one from the child of the deceased i.e. the daughter's child. Then the descendants of the parents or one of them i.e. brother's daughters and sister's children. Then the child of the parents of the parents or one of them i.e. maternal uncles, maternal aunts and paternal aunts.

Question 2424) If two people have the same degree of relation to the deceased, do both inherit or is one preferred over the other?

A: The one who is closest to the deceased in inheritance will be preferred.¹⁵⁰

Sundry regulations

1. A mother receives a third of what remains in two cases: Firstly, when a woman dies and leaves her parents and husband. The husband takes half and the remainder is shared in thirds amongst the parents, a third for the mother and two-thirds for the father. Secondly, a man dies and leaves a wife and his parents. The wife gets a quarter and the remainder is for the parents in thirds, one third for the mother and two-thirds for the father.

¹⁵⁰ A leaves a paternal uncle's daughter and paternal aunt's son. Everything is for her. If her left a daughter's daughter's daughter and a son's daughter's daughter everything is for the son's granddaughter. [al-Jawharah]

2. A man dies and leaves two sons of his paternal uncles and his brother on their mother's side. The brother gets a sixth and the remainder is divided between the two equally.
3. A woman dies and leaves a husband and mother or grandmother and brothers from the mother's side and a full brother. The husband gets half, the mother a sixth, the half brothers a third and nothing for the full brother.
4. A group drowns or a wall falls on them. It is not known who died first. The estate of each of them is for the surviving heirs.
5. If a Fire-worshipper has a double relation in two persons. The one inherits with the other and he inherits from both.¹⁵¹
6. A Fire-Worshipper does not inherit from invalid marriages which their religion permits.
7. 'Asabat of an illegitimate child or a child of *Mula'annah* are the Mawla of their mothers.
8. According to Imaam Abu Hanifah رحمته الله if a man dies and leaves a foetus heir, the estate is suspended until the woman gives birth.
9. According to Imaam Abu Hanifah رحمته الله a grandfather is more entitled to inheritance than brothers. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله he will be treated as one of the brothers unless his share thereby falls to less than a third.
10. If there are several grandmothers then the sixth is for the closest of them.
11. A grandfather deprives his mother. A mother's father's mother does not inherit a share. Every grandmother disinherits her mother.
12. A freed-slave leaves behind his Mawla's father and son. According to Imaam Abu Hanifah رحمته الله and Imaam Muhammed رحمته الله his wealth goes to the son. According to Imaam Abu Yusuf رحمته الله the father gets a sixth and the rest is for the son.

¹⁵¹ E.g. he marries his daughter and she gives birth to two girls. He dies, then one of the girls dies. She thus leaves behind her mother who is also her sister from her father's side and she leaves her full sister. The mother gets a sixth by virtue of being her mother; the full sister gets half; and the mother gets another sixth by virtue of being a sister on the father's side.

13. If he leaves his Mawla's grandfather and brother then according to Imaam Abu Hanifah رحمته الله the wealth is for the grandfather. According to Imaam Abu Yusuf رحمته الله and Imaam Muhammed رحمته الله it is between them.
14. Walaul 'Itaqah cannot be sold or gifted.

Calculation of shares

Question 2425) How are the calculations for the division of the estate done?

A: It is done as follows:

1. If one heir gets a half and another gets a half e.g. a woman leaves her husband and full sister, or there is a half and the remainder to the other heir e.g. a woman leaves a husband and a paternal uncle; then the *asl* [the number used in the division of the estate] is based on the number 2.
2. If there is a third and what remains e.g. the deceased left a mother and paternal uncle, or there is two-thirds and what remains e.g. he left two daughters and a paternal uncle; then the *asl* is 3.
3. If it is a quarter and what remains e.g. the deceased leaves a wife and a brother, or there is a quarter and a half e.g. the deceased left a husband, daughter and brother; then the *asl* is 4.
4. If there is an eighth and what remains e.g. he left a wife and a son, or an eighth and a half e.g. he left a wife and a daughter; then the *asl* is 8.
5. If there is a half and a third e.g. he left a wife, mother and brother, or a half and sixth e.g. he left a mother, daughter and brother; then the *asl* is 6.
6. If there is a quarter and a third e.g. he left a wife and mother, or there is a quarter and a sixth e.g. she left her husband, mother and son; then the *asl* is 12.
7. If there is a share of an eighth and two shares of a sixth e.g. he left his wife, parents and son, or there is an eighth with two-thirds e.g. he left a wife and two daughters; then the *asl* is 24.

'Awl [Allotment of remainder]

Question 2426) After the total allotted shares are added together the total does not reach one. How is the estate divided?

A: The denominator is adjusted to a higher number which can be added together. This number is called 'Awl. This process is called 'Ailah. You have learnt that the denominators are 7, four denominators are not affected by 'Ailah i.e. 2, 3, 4 and 8. Three are adjusted to 'Awl. 6 is adjusted to 7, 8, 9, and 10. 12 is adjusted to 13, 15 and 17. 24 is adjusted to 27.

Tashih [Adjusting the denominator]

Question 2427) Sometimes the shares of a group cannot be divided according to the denominator used. How are the figures adjusted?

A: Firstly, understand that the mathematical relationship between the numbers of the denominators are one of the following – *tamathul*, *tadakhul*, *tawafuq* or *tabayun*.

Tamathul is where the numbers are equal e.g. 3 and 3.

Tadakhul is where one number is a factor of the other e.g. 3 and 9.

Tawafuq is where the smaller number is not in itself a factor of the larger number, but a third number exists as a common factor between them e.g. 8 and 20 and both be divided by 4.

Tabayun is where neither number is a factor of the other, nor is there a third number which is a common factor e.g. 9 and 10.

Once this is understood, know that if the shares of a group do not match with the total denominator, multiply the number in which the group needs to be divided with the 'asl or the 'Awl and the result will encompass the various shares InshaAllaah.

For example, a man leaves his wife and two brothers. The wife gets a quarter and the brothers three-quarters. The denominator of 4 cannot cleanly divide amongst the parties. Hence multiply the *asl* of 4 with the number of brothers of 2 and use the result of 8. The wife gets 2 shares of 8 and the brothers get 6. This was an example of *Tabayun*.

In *Tawafuq* denominator is multiplied by the common factor. For example, a man leaves his wife and 6 brothers. The wife gets a quarter and the brothers get 3 quarters. Divide the number of brothers by their shares, which is 6 divided by 3, which equals 2. Now multiply the shares by 2. The total shares are now 8. The wife gets 2 and each brother gets 1. This is in a case where there was no 'Awl.

An example with 'Awl and *Tabayun* is when the estate is divided amongst the husband and three full sisters. The *Asl* of 6 is made *Awl* to 7. *Tashih* is then made out of 21.

An example with 'Awl and *Tabayun* is when the estate is divided amongst the husband, parents and 6 daughters. The *Asl* is 12. The husband gets a quarter i.e. 3 shares. Each parent gets a sixth which totals 4 shares. The 6 daughters get two-thirds which equals 8 shares. The denominator cannot accommodate the total shares and 'Awl is made to 15 and the daughters' shares (8) are divided by the number of daughters (6). 8 and 6 can both be divided by 2, which reduces the number of daughters to 3. 3 is multiplied with the 'Awl (15) and the result is a denominator of 45. The shares are now completely balanced. The husband gets 9 of the 45, the parents get 12 and the daughters 24, each daughter gets 4.

Question 2428) You have mentioned problems where the shares cannot be divided according to the number of individuals in one group. What if there are more than one group like that?

A: Multiply the first group with the second and if there is a third like that multiply the result with the third. Take the final result and multiply it with the *Asl*. This is if there is *Tabayun* between the groups. For example, A man leaves two wives, 5 grandmothers, 3 brothers on the mother's side and 1 paternal uncle. The *Asl* is 12. The wives get a

quarter or 3 shares. The grandmothers get a sixth or 2 shares. The half-brothers get a third which is 4 shares. The uncle gets the remainder of 3. The shares of all three groups cannot be divided by the number of people in the group. Multiply the number of wives (2) by the number of grandmothers (5). Multiply the result (10) by the number of brothers (3). Multiply that result (30) by the *Asl*. The result is 360 by which denominator the shares balance for each individual.

If the number in each group equals the number in the other, that same number will satisfy the other group if used to multiply. For example, a man leaves 2 wives and 2 brothers. The *Asl* is 4. The 2 wives get a quarter (1 share) and the 2 brothers get the remaining 3 shares. The shares of each party cannot be divided amongst the individuals. Multiply the number in each group by the *Asl*. The result is 8. The shares are balanced. The wives get 2 shares, each takes 1. The brothers get 6 shares, each gets 3.

If the smaller number can be divided into the bigger number then the bigger number will suffice, e.g. with 4 wives and 2 brothers, simply multiply by 4.

If the numbers in each group have a common factor, multiply the remaining factors with each other and the *Asl*. For example a man leaves 4 wives, a sister and 6 paternal uncles. 4 and 6 can both be divided by 2. Multiply the remainders of 2 by 3, and then the result by the *Asl* to give a final result of 48. With this number the estate balances and each heir gets a proper calculated share.

Munasakhah [When an heir dies before receiving his share]

Question 2429) Sometimes an heir dies before receiving his inheritance. How do the surviving heirs of both deceased parties inherit?

A: If the shares received by the second deceased can claim by be shared amongst the remaining heirs, then the first calculation will be used for the second death as well. For example, a woman dies leaving behind her husband, son and 2 daughters. The Asl is 4. The husband gets 1 share and the children 3 according to Allaah's command, "For the male is double the share of the female." To divide the children's shares their number will be multiplied by the Asl (4). They are treated as 4 people because of the son getting double the daughters. The result is 16. the husband gets 4, the son 6 and each daughter gets 3. The husband then dies because they receive their shares. He leaves behind the mentioned son and daughters. The estate remains in 16 shares. The son gets 8 shares and each daughter gets 4. This was an example where the Asl of the second estate is equal [Tasawi] to the number shares which the second deceased obtained from the first deceased. No further multiplication or other calculation was needed.

If the relationship is instead *Tawafuq* or *Tadakhul*, multiply the remaining factor of the second estate with the final adjusted denominator of the first estate. Then multiply that according to the remaining factors of the numbers of the heirs of the first deceased. Both estates will be balanced. For example, a woman dies and leaves behind her husband and two brothers. The adjusted denominator will be 4. The husband takes 2 and the brothers take the remainder of 1 each. The husband then dies before the estate is shared. He leaves 4 sons only. The Asl of the second estate (4) and the number which the second deceased inherited from the first deceased (2) are both divisible by 2. So multiply half the Asl of the second estate (2) with with the final denominator of the first estate (4). The result is 8. Multiply remaining factor of 8 (4) with the remaining factor of the shares of the brothers of the first estate (2). The brothers take 2 shares each and the husband's sons 1 each.

If the relationship is *Tabayun* then multiply the second adjusted denominator with the first adjusted denominator. The shares of the

first deceased's heirs are multiplied by the second adjusted denominator or the remaining factor. The shares of the second deceased's heirs by what is in his hands or the remaining factor. For example, a woman dies and leaves her husband, daughter, mother and brother. The estate is divided into 12 shares. The husband takes a quarter (3), the daughter half (6), the mother a sixth (2) and the brother takes the remainder (1). The husband dies and leaves a wife besides the first deceased wife. He also leaves his parents. His estate will be divided into 4. The wife takes a quarter (1) and the parents take the remaining 3. There is *Tabayun* between the Asl of the second estate (4) and the husband's share from the first estate (3). The two Asl are multiplied resulting in 48 by which both estates are balanced. The shares of the surviving heirs of the first deceased are multiplied by the second Asl (4). The shares of the heirs of the second deceased are multiplied by the shares the second deceased got from the first estate (3). The first deceased daughter gets 24 shares, the first deceased mother gets 8, her brother gets 4, the second wife gets 3, the father of the second deceased gets 6 and his mother gets 3. This totals 48.

NOTE:

Once the shares of the Munasakhah have balanced and the Dirham is divided amongst the heirs and there is a remainder after dividing the Dirhams into 48, share the remainder according to the Habbah [units Dirhams are divided into] for each share, and Allaah knows best.

Conclusion of the Book

By the grace of Allaah, the King, the Giver, this book through which purification is sought, has been completed at the hands of the compiler, the slave, the one in need of the mercy and pleasure of his Rabb, Muhammed, known as "Ashiq Ilahi" - may Allaah pardon him and make his end better than his beginning - in the month of Safar in the year 1411 Hijri in al-Madinah al-Munawwarah.

At-Tashīl ad-Darīrī (Part 2)

All praise belongs to Allaah, in the beginning and the end, inwardly and outwardly. Salutations and peace be upon he whom He sent with overpowering proofs, whose Din will conquer and overpower all other religions; and upon those who accompanied him and strove with him and thus helped Allaah's Din; and on whoever, carried his Din and conveyed it and spread his Sunnah.

Translation Edited by

Mufti Afzal Hosen Elias – May Allaah Protect him.

Zil Qadah 1429

November 2008

التسهيل الضروري لمسائل القدوري

باللغة الإنجليزية

About the Book

This Original is "Mukhtasar al Quduri", by Hadhrat Imam Abdul Hussein Ahmad bin Abi Bakr (رحمته الله عليه) (362 428 AH). Mufti Ashiq Illaahi Muhajir Madani (رحمته الله عليه) (1343 - 1422 AH) wrote a easy to understand, simple to read and in the most proven question and answer teaching method "At-Tashil ad-Daruri".

The original written a thousand years ago is a authentic reliable Hanafi jurisprudence text accepted by ALLAAH TA'ALA and included as a standard important valuable text book in most Darul Ulooms which implement the 'Dars Nizaami'. It has + 12,000 necessary laws. Mufti Ashiq (رحمته الله عليه) added useful explanatory notes and indicated in many places what is the "accepted rulings."

We have numbered and highlighted each Question trying to keep the translation truthful and easy as possible.

This will be useful for especially the students and scholars of Deen and making it interesting reading for the general public.

We praise ALLAAH TA'ALA for allowing us to bring another highly classical work into the English speaking readership.

A.H. Elias (Mufti)



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